

UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

NO. 98-16950

OAKLAND CANNABIS BUYERS'
COOPERATIVE and JEFFREY JONES,

Appellants/Defendants,
v.

UNITED STATES OF AMERICA

Appellee/Plaintiff.

Appeal from Order Denying Motion to Modify Preliminary Injunction
Appeal From Order Modifying Injunction by the United States District Court
for the Northern District of California
Case No. C 98-0088 CRB
entered on October 13, 1998, by Judge Charles R. Breyer.

**EXCERPTS OF RECORD
VOLUME VIII**

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE CHARLES R. BREYER

UNITED STATES OF AMERICA,) C 98-0086 CRB
)
 PLAINTIFF,) SAN FRANCISCO, CALIFORNIA
) MONDAY, OCTOBER 5, 1998
 V.)
)
 MARIN ALLIANCE,)
)
 DEFENDANT.)

UNITED STATES OF AMERICA,) C 98-0088 CRB
)
 PLAINTIFF,)
)
 V.)
)
 OAKLAND CANNIBIS, ET. AL.,)
)
 DEFENDANTS.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ER 1724

1 MONDAY, OCTOBER 5, 1998

2:30 P.M.

2 THE CLERK: CALLING CIVIL 98-0086, THE UNITED STATES
3 OF AMERICA VERSUS MARIN ALLIANCE, AND CIVIL 98-0088, THE
4 UNITED STATES OF AMERICA VERSUS OAKLAND CANNABIS, ET AL.

5 APPEARANCES, PLEASE COUNSEL.

6 MR. QUINLIVAN: GOOD AFTERNOON, YOUR HONOR.

7 MARK QUINLIVAN, ON BEHALF OF THE UNITED STATES.

8 WITH ME TODAY IS DAVID ANDERSON FROM THE CIVIL
9 DIVISION OF THE DEPARTMENT OF JUSTICE; DANIEL DORMONT, FROM
10 THE OFFICE OF CHIEF COUNSEL, DRUG ENFORCEMENT ADMINISTRATION,
11 AND MARY BETH UTTI, OF THE UNITED STATES ATTORNEY'S.

12 MR. RAICH: GOOD AFTERNOON, YOUR HONOR.

13 I'M ROBERT RAICH, REPRESENTING THE OAKLAND CANNABIS
14 BUYER'S COOPERATIVE, AND JEFFREY JONES.

15 WITH US THIS AFTERNOON ARE JAMES BROSNAHAN, GERALD
16 UELMAN, ANDREW STECKLER, WILLIAM PANZER, MARGARET SCHROEDER,
17 REPRESENTING PATIENT INTERVENORS, CHRISTINA KIRK --

18 MISS KIRK-KAZHE: KIRK-KAZHE, REPRESENTING THE
19 OAKLAND BUYER'S COOPERATIVE.

20 MR. RAICH: WE ALSO HAVE A REPRESENTATIVE FROM THE
21 C. M. A. HERE WHO HAS FILED AN AMICUS BRIEF.

22 WHAT'S YOUR NAME?

23 MISS MEAD: ALICE MEAD. GOOD AFTERNOON, YOUR HONOR.

24 THE COURT: GOOD AFTERNOON.

25 MR. RAICH: IF IT PLEASE THE COURT, THERE ARE A

1 NUMBER OF ISSUES TODAY. I THOUGHT IT MIGHT BE USEFUL TO TAKE
2 A MOMENT TO MAKE SURE ALL OF US ARE ON THE SAME SET OF PAGES.

3 THE COURT: THAT'S WHAT I INTENDED TO. LET ME TELL
4 YOU. I HAVE AN ORDER THAT IS, OF COURSE, SUBJECT TO A
5 DISCUSSION. WHEN I SAY "AN ORDER," IT'S AN ORDER I'D ISSUE
6 AND WE OUGHT TO DISCUSS IT.

7 I THOUGHT I'D INDICATE A LITTLE BIT ABOUT THE
8 PRIORITY IN TERMS OF DISCUSSION, AND YOU CAN TAKE IT FROM
9 THERE.

10 FIRST, I WANTED TO ADDRESS THE ISSUE OF THE
11 PROTECTIVE ORDER.

12 SECONDLY, THE ISSUE OF IMMUNITY; AND

13 THIRD, THE ISSUES OF AFFIRMATIVE DEFENSES THAT HAD
14 BEEN THE SUBJECT OF THE MOTION IN LIMINE. SO THAT WAS THE
15 GENERAL WAY I WAS GOING TO APPROACH IT.

16 DOES ANYBODY HAVE A PROBLEM WITH THAT?

17 MR. RAICH: THAT IS FINE WITH US, YOUR HONOR, IF YOU
18 WISH TO TAKE IT IN THAT ORDER.

19 WE HAVE CERTAIN ATTORNEYS WHO ARE PREPARED TO ARGUE
20 CERTAIN OF THOSE ISSUES, AND I MIGHT JUST LAY THAT OUT FOR YOU
21 NOW IF IT WOULD BE USEFUL.

22 WITH REGARD, FIRST OF ALL, TO THOSE AFFIRMATIVE
23 DEFENSES, THE JOINT USER DEFENSE ISSUE --

24 THE COURT: WELL, LET ME TELL YOU WHAT I WOULD LIKE
25 TO DO. I THINK THE BRIEFING HAS BEEN EXTENSIVE ON THIS. THE

1 DEFENSE THAT I WANT TO HAVE SOME DISCUSSION ABOUT IS THE
2 NECESSITY DEFENSE, AS IT RELATES TO BOTH CLUBS AND THE
3 PROFFERS THAT ARE MADE.

4 WITH RESPECT TO THE JOINT USER DEFENSE AND THE DUE
5 PROCESS AFFIRMATIVE DEFENSE, JOINT USER SWIDERSKI ISSUE, AND
6 SO FORTH, I'M GOING TO ADDRESS THEM IN A WRITTEN STATEMENT,
7 BECAUSE I DON'T WANT TO HEAR ANY ARGUMENT ABOUT THOSE THIS
8 AFTERNOON. I DON'T THINK IT IS NECESSARY. IT IS NECESSARY TO
9 HEAR SOME ARGUMENT ON THE NECESSITY DEFENSE.

10 MR. RAICH: AND JAMES BROSNAN IS PREPARED TO
11 ADDRESS THAT SPECIFIC ISSUE.

12 IF ISSUES SHOULD COME UP, WE DO HAVE OTHER ATTORNEYS
13 WHO ARE PREPARED TO ADDRESS THOSE ISSUES, AND TO THE EXTENT
14 THERE IS ANY CROSS-OVER, THEY MAY BE FAR MORE PREPARED TO
15 DISCUSS THOSE ISSUES THAN --

16 THE COURT: THEY ARE CERTAINLY WELCOME.

17 MR. RAICH: WITH REGARD TO GERALD UELMEN, HE IS
18 PREPARED TO DISCUSS THE MEDICAL NECESSITY -- I'M SORRY, THE
19 JOINT USER ISSUE; AND WILLIAM PANZER IS PREPARED TO DISCUSS
20 THE RATIONAL BASIS LAY OF THE SUBSTANTIVE DUE PROCESS ISSUES,
21 OF COURSE, THE COMPELLING STATE INTEREST RELATED WITH THAT.
22 SO THOSE ARE THE ISSUES.

23 PERHAPS, FROM A GLOBAL PERSPECTIVE, WE MIGHT POINT
24 OUT THAT YOUR HONOR IN YOUR SHOW CAUSE ORDER HAS ALREADY FOUND
25 THERE IS A PRIMA FACIE CASE OF A VIOLATION OF CONTEMPT OF THE

1 INJUNCTION. HOWEVER, SINCE THAT TIME THERE HAS BEEN A
2 MOUNTAIN OF EVIDENCE PRODUCED BY THE DEFENDANTS, MAY EVEN BE
3 POSSIBLE THAT AFTER SEEING THAT, YOUR HONOR MAY CHOOSE TO
4 DECIDE THAT IT IS NOT EVEN NECESSARY TO GO FORWARD.

5 IN THE EVENT THAT YOUR HONOR DECIDES THAT THERE MAY
6 STILL HAVE BEEN THIS PRIMA FACIE CASE OF A VIOLATION OF THE
7 INJUNCTION, WE WOULD THEN GET TO THE ISSUE OF THE GOVERNMENT'S
8 MOTION IN LIMINE TO ATTEMPT TO EXCLUDE THE AFFIRMATIVE
9 DEFENSES; AND, CERTAINLY, THESE MATTERS ARE FACT SENSITIVE
10 ENOUGH THAT A JURY SHOULD CERTAINLY TAKE A LOOK AT THOSE
11 FACTS.

12 THE IMMUNITY ISSUE, THE PROTECTIVE ORDER, YOUR HONOR
13 HAS MENTIONED. SO I WOULD PROPOSE AT THIS POINT TO LET JAMES
14 BROSNAHAN DISCUSS THOSE IN THE ORDER --

15 THE COURT: BEFORE WE DO, LET ME GIVE YOU SOME
16 TENTATIVE THOUGHTS SO THE ARGUMENT CAN FOCUS ON THEM.

17 I SEE NO REASON NOT TO GRANT THE PROTECTIVE ORDER.
18 IT SEEMS TO ME APPROPRIATE UNDER THE CIRCUMSTANCES, AND I'M
19 PREPARED TO DO SO WITHOUT ANY ARGUMENT ON THE ISSUE.

20 IT SEEMS TO ME THAT THAT IN LIGHT OF THE HISTORY OF
21 THE LITIGATION, IN LIGHT OF THE FACT THAT I THINK THAT THERE
22 WAS AN INADVERTENT DISCLOSURE, IN LIGHT OF THE FACT THAT THERE
23 WAS CONCERN ABOUT PATIENT'S RIGHTS ABOUT PRIVACY ON CERTAIN
24 ISSUES, IT SEEMS TO BE APPROPRIATE TO GRANT THE PROTECTIVE
25 ORDER AS PROFFERED BY THE DEFENSE HERE. SO I WILL DO SO. IF

1 YOU WANT TO ADDRESS THAT ISSUE WHEN THE TIME COMES, I'LL LET
2 YOU ADDRESS IT, BUT THAT'S MY TENTATIVE THINKING ON THE
3 MATTER.

4 WITH RESPECT TO IMMUNITY, IT IS MY INCLINATION TO
5 DENY THE MOTION FOR IMMUNITY.

6 FIRST OF ALL, I THINK I SHOULD NOTE THAT THIS IS NOT
7 A CRIMINAL PROCEEDING, THOUGH, OBVIOUSLY, THERE ARE
8 IMPLICATIONS; BUT THAT THERE IS NO CIVIL CASE AT WHICH I'M
9 AWARE OF THAT HAS BEEN CITED TO ME BY THE PARTIES THAT WOULD
10 IMPEL OR COMPEL THE GRANT OF IMMUNITY IN THIS SITUATION. AND
11 SO I'M NOT PREPARED TO ISSUE AN ORDER OF IMMUNITY. I THINK
12 THAT THE ISSUES OF IMMUNITY ARE VERY MUCH ISSUES THAT, IN THE
13 FIRST INSTANCE, ARE THE DECISION OF THE GOVERNMENT. THEY HAVE
14 TO INITIATE IT, AND THEY HAVE CHOSEN NOT TO DO SO IN THIS
15 PARTICULAR CASE.

16 I THINK THAT, PERHAPS, MY THINKING IS INFLUENCED IN
17 SOME MEASURE BY WHAT I SEE AS BOTH THE REMEDY SOUGHT BY THE
18 GOVERNMENT AND THE REMEDY THAT I WOULD CONSIDER IF THERE WAS
19 TO BE FOUND A VIOLATION OF THE INJUNCTION.

20 THE GOVERNMENT HAS ADVISED THE COURT THAT IT DOES
21 NOT SEEK TO IMPOSE PENAL SANCTIONS ON ANY OF THE DEFENDANTS IN
22 TERMS OF CONFINEMENT OR IN TERMS OF FINES.

23 WHAT THEY ARE SEEKING IN THIS CASE IS FOR THE COURT
24 TO ORDER THE UNITED STATES MARSHALS TO CLOSE THE PREMISES, AND
25 THAT IS THE SOLE REMEDY, AS I UNDERSTAND IT, THAT IS BEING

1 SOUGHT IN THIS CASE.

2 I WILL TELL YOU THAT BASED UPON WHAT I HAVE SEEN,
3 THAT IS THE SOLE REMEDY THAT I WILL CONSIDER. I WILL NOT
4 CONSIDER CONFINEMENT, PENAL SANCTIONS, EVEN THE IMPOSITION OF
5 A FINE AT THIS POINT. THE ONLY REMEDY THAT I WILL CONSIDER,
6 BASED UPON WHAT HAS BEEN PRESENTED TO ME TO DATE, WOULD BE
7 ORDERING THE UNITED STATES MARSHALS TO ENFORCE THE CLOSURE OF
8 THE PREMISES IF IN FACT THERE'S A VIOLATION OF THE ORDER.

9 SO NOW I THINK THE CONTEXT IN WHICH, AT LEAST I FEEL
10 IT'S INAPPROPRIATE FOR ME TO ISSUE AN ORDER, ASSUMING I HAVE
11 THAT POWER IMMUNIZING ANY OF THE DEFENDANTS.

12 SO THOSE ARE THOSE TWO ARGUMENTS.

13 I THEN WANT TO MOVE TO THE NECESSITY DEFENSE,
14 BECAUSE THAT IS THE DEFENSE THAT I WOULD LIKE TO HAVE SOME
15 DISCUSSION ABOUT.

16 FIRST OF ALL, I WANT TO MAKE SURE THAT WE'RE ALL
17 TALKING ABOUT THE SAME THING, AND I KNOW THAT THE TERM HAS
18 BEEN USED "MEDICAL NECESSITY", BUT AS I VIEW IT, WE ARE
19 TALKING ABOUT A COMMON LAW DEFENSE OF NECESSITY. AND I
20 UNDERSTAND THAT IT IS THE DEFENDANTS' POSITION IN THIS REGARD
21 THAT CONGRESS HAS NOT ABROGATED OR BARRED BY THE ENACTMENT OF
22 THE CONTROLLED SUBSTANCES ACT THE COMMON LAW DEFENSE OF
23 NECESSITY. THAT'S AS I UNDERSTAND THE DEFENDANTS' POSITION TO
24 BE.

25 THE PURPOSE OF TODAY'S HEARING IN SOME RESPECTS WAS

1 TO ALLOW THE DEFENDANTS TO COME IN AND TO PROVIDE WHAT
2 EVIDENCE THEY WOULD CONSIDER APPROPRIATE IN PRESENTING THE
3 AFFIRMATIVE DEFENSES THAT HAD BEEN RAISED AND, AGAIN, THE
4 GOVERNMENT COMING IN AND SAYING THAT AS A MATTER OF LAW, THESE
5 DEFENSES SHOULD NOT BE PERMITTED.

6 AS I HAVE REVIEWED THE PROFFERS FOR BOTH CLUBS, I
7 BELIEVE THAT THERE MAY BE A DIFFERENCE IN TERMS OF THE
8 PRESENTATION THAT HAS BEEN GIVEN AS TO THE MARIN CLUB AND THE
9 OAKLAND CLUB.

10 IN PARTICULAR, IF ONE LOOKS AT THE SITUATION IN
11 OAKLAND, AND THERE ARE OTHER DIFFERENCES, BUT LET ME AT LEAST
12 ADDRESS THE DIFFERENCES THAT I THINK ARE THE RELEVANT
13 DIFFERENCES.

14 IN THE OAKLAND SITUATION, AS I UNDERSTAND IT AFTER
15 SEEING THE GOVERNMENT'S EVIDENCE IN ITS FORM -- I KNOW IT'S
16 NOT LAW IN ITS FORM. IT'S AFFIDAVIT FORM OR DECLARATION
17 FORM -- IT IS THAT ON A PARTICULAR DAY, A TRAINED NARCOTICS
18 AGENT OBSERVED -- I DON'T KNOW WHETHER IT WAS 10 OR 14, BUT A
19 TOTAL OF 14 TRANSACTIONS IN WHICH, BASED UPON HIS OPINION AND
20 EXPERIENCE, MARIJUANA WAS PROVIDED TO 14 INDIVIDUALS, 10 AND
21 4, AS I READ IT, ON THIS PARTICULAR DAY.

22 THERE IS ALSO SOME OTHER EVIDENCE THAT HE OFFERS AS
23 TO THE OPERATION OF THE CLUB. IN PARTICULAR -- AND I THINK
24 IT'S OF SOME SIGNIFICANCE, IS THAT ON THAT PARTICULAR DAY OR
25 PRECEDING THAT PARTICULAR DAY, IT WAS ANNOUNCED PUBLICLY IN

1 THE PRESS BY MR. JONES, AS I UNDERSTAND IT, THAT A
2 DISTRIBUTION OF MARIJUANA WAS GOING TO TAKE PLACE AND THAT THE
3 PRESS WAS INVITED AND I THINK, ACTUALLY, THE UNITED STATES
4 ATTORNEY, ACCORDING TO THE DOCUMENT, WAS INVITED TO ATTEND AND
5 WITNESS THE TRANSACTIONS INVOLVED, THAT IS, THE DISTRIBUTION
6 OF MARIJUANA.

7 I THINK THE PRESS RELEASE SAID THAT THERE WERE GOING
8 TO BE 4 SUCH INSTANCES. THE AGENT'S REPORT IS THAT THERE WERE
9 A TOTAL OF 14.

10 NOW, I NOTE ALSO THAT IN THE DECLARATION THAT WAS
11 SUBMITTED WHEN THE DOCTOR'S DECLARATION WAS SUBMITTED, THAT ON
12 THAT PARTICULAR DAY BY THE DEFENSE, DOCTOR ALCALAY -- I MAY
13 HAVE HIS NAME WRONG. SORRY. I APOLOGIZE IF I DO -- SAID THAT
14 ON PARTICULAR DAY, AND MAYBE I COULD QUOTE IT. I HAVE IT.
15 PARAGRAPH 22, DR. ALCALAY STATES, "ON MAY 21ST, 1998,
16 APPROXIMATELY 191 PATIENTS CAME TO THE COOPERATIVE."

17 AND THEN HE HAS SOME OTHER STATEMENTS TO MAKE
18 CONCERNING THOSE INDIVIDUALS, BUT I UNDERSTAND THAT THAT IS BY
19 WAY OF OFFER OF PROOF FOR THE DEFENSE, AND RIGHT NOW, I THINK
20 WHAT I AM LOOKING AT IS, FIRST OF ALL, IN TERMS OF WHAT THE
21 EVIDENCE IS THAT THE GOVERNMENT WOULD OFFER, AND THEN WHAT
22 EVIDENCE THE DEFENSE WOULD OFFER ON THEIR AFFIRMATIVE
23 DEFENSES.

24 SO I DON'T KNOW THAT I NEED TO CONSIDER WHETHER 191
25 PEOPLE CAME TO THE OAKLAND BUYER CANNABIS CLUB FOR WHATEVER

1 PURPOSE. I JUST SIMPLY NOTE THAT'S WHAT THE DECLARATION
2 STATED.

3 SO THE QUESTION THEN BECOMES -- OH, AND THEN OF THE
4 14 INDIVIDUALS WHO RECEIVED NARCOTIC OR -- EXCUSE ME. I WANT
5 TO BE TRY TO BE MORE ACCURATE IN WHAT I SAY. OF THE 14
6 INDIVIDUALS WHO OBTAINED SOME SUBSTANCE ON THAT PARTICULAR
7 OCCASION, THE AGENT STATED THAT IN HIS OPINION THEY WERE GIVEN
8 MARIJUANA. OKAY. THAT'S THE AGENT'S OPINION. HE WAS UNABLE
9 OR DIDN'T IDENTIFY THE PARTICULAR INDIVIDUALS INVOLVED, WHICH,
10 OF COURSE, GOES TO ONE OF THE ISSUES THAT THE DEFENSE HAS
11 RAISED HERE, WHICH IS THE ISSUE THAT IF IN FACT SOMEBODY
12 HASN'T BEEN IDENTIFIED, HOW CAN YOU DEFEND AGAINST IT?

13 AND I THINK THE ANSWER TO THAT IS THAT THE
14 GOVERNMENT DOES NOT HAVE AN OBLIGATION IN A CIVIL PROCEEDING
15 TO IDENTIFY WHICH INDIVIDUALS RECEIVED MARIJUANA. THEY WOULD
16 HAVE AN OBLIGATION TO PRESENT EVIDENCE THAT IN FACT A PERSON
17 DID RECEIVE A SUBSTANCE THAT A REASONABLE INFERENCE CAN BE
18 DRAWN WAS MARIJUANA, BUT YOU MAY DISPUTE THAT, AND I'LL HEAR
19 YOU ON THAT PARTICULAR ISSUE. I DON'T THINK IT'S THE ANSWER
20 TO THE INQUIRY THAT THEY ARE UNABLE TO IDENTIFY THE
21 INDIVIDUAL.

22 I ALSO THINK THAT IN THE CIVIL CONTEXT, IT'S NOT
23 UNFAIR TO DRAW AN INFERENCE THAT THE DEFENDANTS WOULD KNOW WHO
24 THE PERSON WAS WHO RECEIVED ANY SUBSTANCE, WHATEVER IT WAS. I
25 MEAN, AFTER ALL, TO SOME EXTENT, TO SOME EXTENT AND BEING AS

1 HONEST AS WE CAN ABOUT ALL THIS, THE ISSUE THAT CONFRONTS THE
2 DEFENSE IS NOT WHETHER OR NOT MARIJUANA WAS DISTRIBUTED. THE
3 ISSUE IS WHETHER IT WAS LAWFUL TO DISTRIBUTE MARIJUANA. DO
4 THESE PEOPLE WHO RECEIVED MARIJUANA HAVE A LEGITIMATE, LEGAL
5 DEFENSE TO THEIR RECEIVING MARIJUANA; AND, SIMILARLY, IF THEY
6 DO, WAS IT APPROPRIATE THAT THE CLUB, OR WHOEVER WAS
7 DISPENSING MARIJUANA, CAN THEN DISTRIBUTE IT UNDER THOSE
8 CIRCUMSTANCES?

9 SO TO SOME EXTENT, IT SEEMS TO BE A FALSE ISSUE, BUT
10 I'LL HEAR ARGUMENT ABOUT IT. THERE SEEMS TO BE A FALSE ISSUE
11 TO SAY, DID THEY RECEIVE MARIJUANA ON THAT PARTICULAR DAY?

12 ON THE OTHER HAND, AND MAYBE I'VE SAID ENOUGH ABOUT
13 OAKLAND BECAUSE I WANT TO TALK ABOUT MARIN. MARIN, YOU HAVE A
14 SLIGHTLY DIFFERENT SITUATION BECAUSE IN THE OFFER AS TO MARIN,
15 AS I UNDERSTAND IT, THE AGENT DIDN'T GO INSIDE THE PREMISES.
16 HE SAW A NUMBER -- WHEN I TALK ABOUT PREMISES, THE
17 DECLARATION, THE INJUNCTION, IDENTIFIED A PARTICULAR LOCATION
18 IN A PARTICULAR BUILDING. MAYBE HE MISIDENTIFIED IT, I DON'T
19 KNOW. BUT HE IDENTIFIED IT ONCE IN A PARTICULAR BUILDING AND
20 SAID THAT THAT SUITE CANNOT BE USED FOR THE PURPOSE OF
21 DISTRIBUTING MARIJUANA. THAT'S WHAT THE INJUNCTION SAID.

22 WHAT THE OFFICER SAW WAS HE PARKED, HIMSELF, OUTSIDE
23 THE PREMISES, AND HE SAW A NUMBER OF PEOPLE GO INTO A BUILDING
24 WHICH, ACCORDING TO THE DEFENSE'S DECLARATION, HAS A NUMBER OF
25 DIFFERENT OFFICES AND THEN SEVERAL PEOPLE -- I DON'T KNOW WHAT

1 THE NUMBER IS. I FORGET -- EITHER 11 OR 14, CAME OUT AND SOME
2 OF THEM SMOKED CIGARETTES.

3 HE DOES NOT SAY IN THE DECLARATION THAT THE
4 CIGARETTES THEY SMOKED WERE MARIJUANA CIGARETTES. IT DOESN'T
5 SAY THAT, AND WE ALSO HAVE TO KEEP IN MIND THAT IN BOTH
6 SITUATIONS, THE TEST IS WHETHER OR NOT THE GOVERNMENT HAS
7 SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE INJUNCTION IS
8 VIOLATED. THAT'S THE TEST.

9 AND SO TO THE EXTENT THAT EITHER THE COURT OR A
10 JURY, TO THE EXTENT THAT A TRIER OF FACT -- LEAVING OUT WHO
11 THE TRIER OF FACT MAY BE, WHOEVER THAT TRIER OF FACT MAY BE --
12 THE TRIER OF FACT MUST FIND, AS I UNDERSTAND IT, BY CLEAR AND
13 CONVINCING EVIDENCE THAT THE INJUNCTION WAS VIOLATED.

14 I DON'T KNOW, AND I'LL ASK THE GOVERNMENT THIS,
15 WHETHER THEY HAVE REALLY MET THEIR BURDEN IN THE CASE OF THE
16 MARIN COUNTY SITUATION, BECAUSE IT SEEMS TO ME THAT THE
17 DECLARATION THAT HAS BEEN PROFFERED BY THE MARIN COUNTY
18 DEFENDANT CERTAINLY RAISES A TRIABLE ISSUE OF FACT, A TRIABLE
19 ISSUE OF FACT AS TO WHETHER OR NOT THE INJUNCTION WAS
20 VIOLATED.

21 SO, THOSE ARE SORT OF MY PRELIMINARY THOUGHTS. I
22 DON'T KNOW WHETHER I HAVE GIVEN YOU MUCH GUIDANCE AS TO WHAT I
23 AM THINKING, BUT YOU WON'T HAVE ANY -- YOU NEVER HAVE A
24 PROBLEM READING MY MIND.

25 MR. BROSNAHAN, WHY DON'T YOU GO FORWARD?

1 MR. BROSNAHAN: WELL, I THINK BOTH SIDES, YOUR
2 HONOR, THANK YOUR HONOR FOR THAT FULL INTRODUCTORY DISCUSSION
3 OF YOUR HONOR'S THINKING. I THINK IT'S GOING TO HELP BOTH
4 SIDES TO FOCUS ON WHAT THE CASE IS REALLY ALL ABOUT.

5 AND GOING RIGHT TO MEDICAL NECESSITY, I'D LIKE TO
6 START WITH TWO POINTS, IF I MAY.

7 THE FIRST IS THAT THE COURT MENTIONED LAST TIME WE
8 WERE HERE TWO CASES, AGUILAR AND PETERSON, AND WE HAD THE
9 OPPORTUNITY TO GO BACK AND REREAD THOSE CASES VERY CAREFULLY;
10 AND BOTH OF THEM, I THINK, SUGGEST A VERY STRINGENT STANDARD
11 WITH REGARD TO WHAT YOUR HONOR IS ABOUT TO DECIDE.

12 IN THE CASE OF AGUILAR, AT PAGE 692, "IT MUST BE
13 CLEAR THAT AS A MATTER OF LAW, THERE IS NO MEDICAL NECESSITY."
14 AND IN A MOMENT, WITH YOUR HONOR'S INDULGENCE, I'LL GET TO THE
15 EVIDENCE THAT'S BEFORE YOUR HONOR, BUT ON PAGE 692, "THERE IS
16 NO QUESTION THAT THERE MUST BE ELIMINATED FROM THE RECORD THE
17 POSSIBILITY OF A FACTUAL DIFFERENCE." AND THAT'S THE WAY IT
18 OUGHT TO BE.

19 SECONDLY, IN PETERSON WHERE THERE WAS NO EVIDENCE AT
20 THE HEARING, NEITHER PARTY HAD REQUESTED A HEARING IN THAT
21 CASE CONTRARY TO THIS CASE WHERE WE HAVE BEEN BEATING ON THE
22 JUDICIAL DOOR AND ASKING FOR A TRIAL; AND INDEED YOUR HONOR
23 HAS HEARD US ON THAT, REFLECTED IT IN YOUR HONOR'S ORDER.

24 THE COMMENT AT PAGE 1324 OF PETERSON I THINK IS
25 HELPFUL, AND IT JUST SAYS, "ORDINARILY, THERE CAN BE NO

1 CONTEMPT ON AFFIDAVIT", AND THAT'S EXACTLY WHAT THE GOVERNMENT
2 IS ASKING FOR HERE.

3 THE TEACHING IS NOT SO DISMAL FROM THE HIGHER COURT
4 FOR THIS MATTER AS FAR AS WE'RE CONCERNED. WE START WITH THAT
5 PREMISE.

6 THE SECOND PREMISE WE START WITH IS, YOUR HONOR
7 SITTING AS A JUDGE IN A EQUITY COURT FILED YOUR ORDER AND ALSO
8 YOUR OPINION, AND IN THAT OPINION, AS YOUR HONOR KNOWS, YOU
9 TALKED ABOUT THE FACT THAT THE DEFENDANTS HERE, IF THE COURT
10 ISSUES AN INJUNCTION, AND I QUOTE, "DEFENDANTS HAVE A RIGHT TO
11 A JURY IN ANY PROCEEDING IN WHICH IT IS ALLEGED THAT THEY HAVE
12 VIOLATED THE INJUNCTION."

13 AND, THEN, AGAIN, YOUR HONOR SAID, "WE'LL HAVE 12
14 JURORS. THEY MUST RETURN A UNANIMOUS VERDICT UNDER RULE 48
15 UNLESS THE PARTIES STIPULATE OTHERWISE."

16 YOU THEN SAID, "SECOND. EVEN ASSUMING THAT THE
17 FEDERAL GOVERNMENT COULD BRING A MOTION FOR SUMMARY JUDGMENT,"
18 WHICH IS WHAT THIS IS LIKE TODAY, "IN A CONTEMPT PROCEEDING,"
19 AND THEN YOU SAY, "AND IT IS NOT CLEAR FROM THE PLAIN LANGUAGE
20 OF SECTION 882(B) THAT IT COULD, SUMMARY JUDGMENT MAY BE
21 GRANTED AND A PARTY DENIED THE RIGHT OF A JURY, ONLY IF NO" --
22 AND THIS IS IN ITALICS, "NO REASONABLE JURY COULD FIND FOR THE
23 NON-MOVING PARTY..." AND THEN THE GOVERNMENT MISCONCEIVES
24 THAT LANGUAGE AS BEING IRRELEVANT BECAUSE THE INTENT OF THE
25 PARTIES IS NOT RELEVANT.

1 IT IS THE INTENT OF THE COURT WHEN YOU SAT AS A
2 JUDGE IN EQUITY AND SAID, "HERE, YOU DON'T DO THIS", AND YOU
3 WERE QUITE SPECIFIC AND THEN, I THINK, AGAIN HELPFUL TO THE
4 PARTIES WHO SAW THIS AND LIVED BY IT, AS WE SAY FROM THE
5 RECORD. SO THOSE ARE THE TWO PLACES THAT I START.

6 NOW, A GENERALITY. ALL OF THE EVIDENCE ABOUT
7 NECESSITY, ALL OF THE MEDICAL MATERIALS, ALL OF THE ARTICLES,
8 AND ALL OF THAT, COMES FROM THE DEFENSE. THE GOVERNMENT HAS
9 NOT ONLY -- NOTHING ABOUT THESE 14 INDIVIDUALS, AS FAR AS
10 THEIR MEDICAL CONDITION IS CONCERNED, BUT INDEED OFFERS YOUR
11 HONOR NOTHING TO SHOW ON THE MEDICAL NECESSITY PART.

12 I'M NOT TALKING ABOUT THE FIRST PART, WHICH IS, WERE
13 THERE SALES, AND ALL THAT? I'M TALKING ABOUT THE MEDICAL
14 NECESSITY. SO ON THAT ISSUE THE GOVERNMENT IS SILENT.

15 NOW, WE -- THEY HAVE TO PROVE, AS YOUR HONOR SAID A
16 MOMENT AGO, A VIOLATION BY CLEAR AND CONVINCING EVIDENCE.
17 THAT'S THEIR BURDEN.

18 LET'S ASSUME FOR THE PURPOSES OF THIS DISCUSSION
19 THAT MEDICAL NECESSITY PLED BY THE DEFENDANTS AS AN
20 JUSTIFICATION FOR WHATEVER OCCURRED THEN HAS TO BE DEALT WITH
21 ON A PREPONDERANCE BASIS, AND A PREPONDERANCE, AS I UNDERSTAND
22 IT -- AND THESE ARE THE WORDS OF THE INSTRUCTIONS AND THE
23 WORDS IN EVERY ARTICULATION OF IT -- IS THAT MUCH EVIDENCE
24 WHEN COMPARED WITH THE EVIDENCE AGAINST IT TO PROVE AT LEAST
25 SLIGHTLY THAT SOMETHING IS MORE TRUE THAN NOT TRUE. THAT'S A

1 PREPONDERANCE OF THE EVIDENCE.

2 BUT WHEN WE GO TO DO THAT THIS AFTERNOON AND WE TAKE
3 THE DEFENDANTS' EVIDENCE, WHATEVER WE THINK ABOUT IT, AND IT'S
4 HERE, AND WE LOOK AT THE GOVERNMENT'S EVIDENCE, THERE ISN'T
5 ANY --

6 THE COURT: LET'S LOOK AT THE DEFENDANTS' EVIDENCE.
7 AS I LOOK AT THE DEFENDANTS' EVIDENCE, IT LOOKED TO ME THAT
8 WHAT THE DEFENSE IS SAYING IS:

9 ONE. THAT AS TO THE TWO OUT OF THE 14, THERE WAS
10 CLEARLY A NECESSITY DEFENSE. IT MET ALL THE CRITERIA SET
11 FORTH IN THE DEFENSE OF NECESSITY.

12 AS TO THE REMAINING 12 OF THE 14, NOT MUCH IS SAID
13 ABOUT IT. PEOPLE AREN'T IDENTIFIED. I DON'T KNOW WHETHER IT
14 IS PERSON NUMBER 6 OR NUMBER 7, AND MAYBE YOU DON'T EITHER. I
15 UNDERSTAND THAT THAT'S A PROBLEM, WHICH YOU CAN ADDRESS, BUT
16 NOTHING IS SAID ABOUT IT IN TERMS OF A PARTICULARIZED
17 DEFENDANT, AND THE ISSUE SEEMS TO ME TO BE WHETHER OR NOT --
18 CERTAINLY, NOBODY WOULD ARGUE THAT 2 OUT OF 14 IS SUBSTANTIAL
19 COMPLIANCE WITH THE ORDER -- I MEAN, THE INJUNCTION. I DON'T
20 THINK YOU'RE URGING THAT, "WELL, BECAUSE SOME OF THE PEOPLE,
21 WE DEMONSTRATED THAT WE HAVE EVIDENCE THAT WE WOULD PRESENT TO
22 THE TRIER OF FACT ABOUT SOME OF THE PEOPLE HAVING A NECESSITY
23 DEFENSE AND AT LEAST SOME OF THE PEOPLE ARE TWO, THEREFORE, WE
24 JUST SUCCEED AS TO THOSE TWO," THAT'S THE END OF THE INQUIRY.
25 THERE'S NO CONTEMPT. I DON'T THINK YOU'RE SAYING THAT.

1 YOU'RE SAYING --

2 MR. BROSNAHAN: WE ARE NOT SAYING THAT.

3 THE COURT: YOU'RE SAYING SOMETHING ELSE?

4 MR. BROSNAHAN: THAT'S RIGHT.

5 THE COURT: BUT I DON'T KNOW WHAT YOU ARE REALLY
6 SAYING ABOUT THOSE 12 PEOPLE OUT THERE.

7 MR. BROSNAHAN: WE ARE SAYING THAT WE HAVE
8 AFFIDAVITS BEFORE YOUR HONOR THAT INCLUDE A NUMBER OF
9 AFFIDAVITS, QUITE A BIT LARGER THAN TWO, THAT TALK ABOUT
10 PEOPLE BEING THERE ON THAT DAY, THAT TALK ABOUT THEIR
11 ILLNESSES AND ESTABLISH A NECESSITY DEFENSE, AND IT'S MUCH
12 MORE THAN TWO; THAT WE HAVE THOSE AFFIDAVITS.

13 WE ARE SAYING THAT IN ORDER TO SHOW YOUR HONOR THE
14 EVIDENCE IN THIS CASE, IT IS CLEAR THAT IN THE GROUP OF 191,
15 THEY HAVE SPECIFIED SERIOUS ILLNESSES SO AS A WAY TO TRY TO
16 REFLECT ON THE 14, BECAUSE WE DON'T HAVE THEIR NAMES AND
17 WHEN -- AND, YOUR HONOR, MAY WANT TO DRAW SOME INFERENCES IN
18 THE CASE AND, PERHAPS, THOSE ARE SUITABLE FOR VARIOUS REASONS
19 AS WE GO ALONG. WE'D LIKE AN OPPORTUNITY TO ADDRESS THOSE,
20 BUT YOUR HONOR MAY DO THAT.

21 BUT AN INFERENCE THAT WHEN THE GOVERNMENT SAYS THEY
22 HAD A FELLOW LOOK THERE AND SAW 14 PEOPLE, THE INFERENCE THAT
23 THEY DON'T HAVE A NECESSITY DEFENSE IS NOT -- WOULD NOT STAND
24 THE RATIONAL BASIS.

25 THE COURT: I WOULDN'T DRAW THAT INFERENCE,

1 MR. BROSNAHAN, AND I DON'T THINK THE GOVERNMENT IS ASKING ME
2 TO DRAW THAT. WE ARE TALKING ABOUT AN AFFIRMATIVE DEFENSE.

3 WHAT WE ARE SAYING IS -- BY THE WAY, I HAVE ASSUMED.
4 I MAY ABSOLUTELY BE WRONG, BUT I HAVE ASSUMED THAT MOST, IF
5 NOT ALL OF THE PEOPLE WHO VISIT THESE PLACES DO HAVE SERIOUS
6 PROBLEMS. I'M NOT PASSING JUDGMENT. I'M NOT IN A POSITION TO
7 SAY THAT JONES, OR SMITH, OR SOMEBODY ELSE DOESN'T HAVE A
8 SERIOUS MEDICAL PROBLEM. THEY MAY VERY WELL HAVE A SERIOUS
9 MEDICAL PROBLEM.

10 THE ISSUE THOUGH AS TO THE DEFENSE OF NECESSITY, I
11 READ UNDER AGUILAR, WHICH IS VERY, VERY PARTICULARIZED, AND IT
12 SAYS THAT IF SOMEBODY IS GOING TO DO AN ACT, WHICH IS
13 FORBIDDEN BY LAW, THEY MAY BE EXCUSED -- AND I MAY NOT BE
14 USING EXACTLY THE RIGHT WORDS FOR IT -- BUT THEY MAY BE
15 EXCUSED FROM CRIMINAL LIABILITY IF... AND THEN IT GOES THROUGH
16 THE FOUR CRITERIA, BECAUSE IT IS THAT THEY ARE COMMITTING, AS
17 WE KNOW, THEY ARE COMMITTING THE LESSER EVIL. THEY ARE DOING
18 THAT WHICH IS REQUIRED BY COMMON SENSE AND, PERHAPS, BY
19 OPERATION OF THE WORLD, THEY ARE DOING THE THING THAT MAKES
20 SENSE.

21 AND WHAT I UNDERSTAND THE DEFENSE OF NECESSITY TO BE
22 IS THAT IT CAN'T BE DONE ON A BLANKET BASIS. IT HAS TO BE
23 DONE ON A PERSON-BY-PERSON-BY-PERSON BASIS, AND THAT IS THE
24 SHORTCOMING. I WANT TO BE ABSOLUTE ON THE RECORD. THAT SEEMS
25 TO BE THE SHORT COMING OF THE PROFFER MADE BY THE DEFENSE IS

1 THAT YOU SAY, "LOOK. TWO OF THESE PEOPLE, YES; AND THE OTHER
2 12 PEOPLE IN THE GOVERNMENT'S VIEW, THEY ARE SERIOUSLY ILL.

3 MR. BROSNAHAN: LET ME ADDRESS THAT, IF I MAY,
4 BECAUSE THE PROCEDURAL CONTEXT I UNDERSTAND NOT TO BE IN
5 CONTROVERSY. THE GOVERNMENT BY CLEAR AND CONVINCING EVIDENCE
6 MUST SHOW THAT THE OAKLAND CANNABIS COOPERATIVE VIOLATED THE
7 ORDER, AND THAT GIVES RISE, EXPLICITLY DESCRIBED IN YOUR
8 HONOR'S ORDER, TO NOW THE QUESTION OF NECESSITY AND THE
9 SPECIFICITY THAT THE GOVERNMENT WILL BRING TO THAT, AND YOUR
10 HONOR IS QUITE SPECIFIC ABOUT THAT. BY OUR VIEW THE
11 GOVERNMENT IS IGNORING THAT LANGUAGE.

12 YOUR HONOR SAYS THAT WHEN WE GET TO THE TRIAL, THERE
13 WILL BE SPECIFIC EVIDENCE AND THEN AND ONLY THEN CAN WE DEAL
14 WITH NECESSITY, AND THE GOVERNMENT HAS NOT DONE THAT.

15 AND HERE'S WHAT I WOULD LIKE TO ADDRESS: THE
16 GOVERNMENT COMES IN AND STATES THAT THERE'S BEEN A VIOLATION
17 OF THE ORDER BECAUSE AN AGENT SAW 14 PEOPLE UNNAMED,
18 BASICALLY. THERE WERE FOUR THAT ARE AT A PRESS CONFERENCE,
19 AND THEN THERE WERE TEN OTHERS, AND THEY WERE NOT NAMED.

20 IN AGUILAR, THERE WAS NO MYSTERY ABOUT WHAT HAD
21 HAPPENED, WHETHER A PRIEST WAS GIVING A SANDWICH TO SOMEBODY,
22 WHATEVER. THE NAMES WERE KNOWN, AND SO ONE COULD LOOK AT THAT
23 AND DEAL WITH IT; AND BESIDES THAT, THE COURT HAD A LEGAL
24 BASIS TO ELIMINATE, WHICH THE COURT DOES NOT HAVE BEFORE YOU.

25 THE GOVERNMENT DID NOT PROVIDE YOU WITH, NOR DOES

1 THE RECORD ALLOW, A POSITION THAT THERE IS A MISSING ELEMENT
2 IN THE PARTICULAR DEFENSE OF NECESSITY.

3 FOR EXAMPLE, YOUR HONOR HAS QUITE RIGHTLY STATED IN
4 YOUR ORDER, THE FOUR ARE A CHOICE OF EVIL. WELL, WE HAVE
5 AFFIDAVITS, AND I WOULD LIKE TO GET TO THE EVIDENCE IN THE
6 CASE, BUT WE HAVE AFFIDAVITS THAT SHOW THAT PEOPLE WHO ARE
7 HERE, INCLUDING SOME OF THE SPECIFIC PEOPLE THAT ARE PROBABLY
8 NAMED BY THE GOVERNMENT, HAVE A CHOICE OF EVIL BETWEEN PAIN ON
9 THE ONE HAND, AND THE PROHIBITION OF THE STATUTE ON THE OTHER;
10 AND THAT IS A BALANCING OF EVILS. WE CAN SATISFY YOUR HONOR
11 THAT WE HAVE THE EVIDENCE TO THAT EFFECT.

12 SECONDLY, THAT THERE IS IMMEDIATE AND EMINENT HARM.
13 WHEN ONE HAS, AND I QUOTE FROM THE WEALTH OF
14 AFFIDAVITS BEFORE YOUR HONOR, CHRONIC PAIN, NAUSEA,
15 SPASTICITY -- I SAY THESE THINGS COMMONLY TO YOUR HONOR AS
16 BEST I CAN, BUT IT'S WHAT THE CASE IS ABOUT. WHEN ONE HAS
17 THOSE THINGS IN THE MORNING WHEN YOU WAKE UP, THERE IS AN
18 EMINENCE THAT SATISFIES NUMBER 2.

19 NUMBER THREE. CAUSAL CONNECTION BETWEEN THE CONDUCT
20 AND THE HARM. YES.

21 NUMBER 4, AND THIS IS THE ONLY ONE THAT GETS ANY
22 ATTENTION AND MOST IMPORTANTLY -- IT IS THE ONLY ELEMENT THE
23 GOVERNMENT ADDRESSES IN ITS BRIEF. THEY SAY THERE ARE NO
24 OTHER LEGAL ALTERNATIVES -- THAT'S THE FOURTH REQUIREMENT.
25 THEY SAY THERE ARE LEGAL ALTERNATIVES, AND THEY ADDRESS THOSE.

1 BEFORE I GET TO THE LEGAL PART OF THAT, LET ME JUST
2 SAY TO YOUR HONOR WHAT I THINK THE RECORD SHOWS CONCERNING THE
3 EVIDENCE.

4 FOR EXAMPLE, DR. ALCALAY, IN PARAGRAPHS 21, 22 AND
5 23, DESCRIBES HIS KNOWLEDGE OF THE PEOPLE WHO COME THERE TO
6 THE OAKLAND CANNABIS COOPERATIVE, AND THAT THEY HAVE A WASTING
7 SYNDROME, SOMETHING THAT'S NOT BEEN ADDRESSED BY ANY CASE THAT
8 I KNOW OF, AND IT'S IMPORTANT THAT IT'S NOT BEEN ADDRESSED BY
9 ANY CASE. THEY HAVE NAUSEA. THEY HAVE SEVERE APPETITE
10 DEFICIENCIES. OF THE PEOPLE THAT ARE DESCRIBED IN THE ONE
11 LIST THAT IS THERE, 66 PERCENT HAVE H. I. V. OR AIDS. 4
12 PERCENT HAVE CANCER; TWO PERCENT, GLAUCOMA; ONE PERCENT,
13 MULTIPLE SCLEROSIS; 20 PERCENT, CHRONIC PAIN. AN EXAMPLE OF
14 THAT IS QUADRIPLÉGIC. ALL 20 PERCENT DON'T HAVE QUADRIPLÉGIC,
15 BUT IT'S AN EXAMPLE OF CHRONIC PAIN.

16 THE COURT: IS IT AN EXAMPLE OF CHRONIC PAIN THAT
17 CAN ONLY BE TREATED BY MARIJUANA?

18 MR. BROSNAHAN: AS HE CONTINUES TO SAY IN HIS
19 AFFIDAVIT THAT SOME OF THESE PEOPLE DO NOT BENEFIT FROM THE
20 OTHER ALTERNATIVE.

21 THE COURT: ISN'T THAT THE PROBLEM, MR. BROSNAHAN,
22 AND THE ONE THAT I WILL TRY TO ADDRESS AND, PERHAPS, IT OUGHT
23 NOT TO BE THE PROBLEM, BUT IT SEEMS TO ME TO BE THE PROBLEM,
24 IS THAT IF THE DEFENSE IS A PARTICULARIZED DEFENSE, IF I AM
25 RIGHT IN THAT, ARGUABLY, YOU COULD SAY, I'M WRONG IN THAT

1 BECAUSE IT'S SOMETHING CALLED SUBSTANTIAL COMPLIANCE, AND WHAT
2 THAT MEANS, AND SO FORTH. BUT IF I AM RIGHT IN THAT, THAT IN
3 THIS PARTICULARIZED ITEM, DON'T YOU HAVE TO SHOW ON A
4 CASE-BY-CASE BASIS THAT THAT PERSON WHO WAS FURNISHED
5 MARIJUANA ON THAT PARTICULAR DAY MET THOSE FOUR CRITERIA FOR A
6 DEFENSE?

7 AND THAT IN A WAY IS THE ODD SITUATION WE'RE DEALING
8 WITH WHEN WE TALK ABOUT CANNABIS CLUBS WHICH, FOR A VARIETY OF
9 REASONS, MAY HAVE TO BE OUT THERE DISPENSING MARIJUANA IN THAT
10 PARTICULAR WAY, BUT THE PROBLEM YOU HAVE IS THAT IT DOESN'T
11 LEND ITSELF IN TERMS OF A DEFENSE IN MY VIEW. IT DOESN'T LEND
12 ITSELF TO A GENERALIZED DEFENSE.

13 WHEN YOU LOOK AT WHAT I SAID IN MY ORDER, AS I READ
14 IT, I TALKED ABOUT IT HAD TO BE SHOWN, AND I'M GOING BACK TO
15 WHEN THE ORDER WAS ISSUED, BECAUSE I DIDN'T KNOW WHETHER IT
16 WOULD BECOME AN ISSUE OR NOT. BUT WHAT I SAID WAS THAT THE
17 DEFENSE OF NECESSITY MAY BE AVAILABLE, BUT IT IS ONLY
18 AVAILABLE FOR THE PARTICULAR PERSON INVOLVED, AND I REALIZE
19 I'M PARAPHRASING IT. WHATEVER I SAID BACK IN MAY IS THE WAY I
20 SAID IT, BUT THAT'S THE PROBLEM I SEE IS THAT THE -- IS WHAT
21 YOU HAVE OFFERED BY WAY OF YOUR DECLARATIONS IN THERE, AND
22 THEY ARE EXTENSIVE AND SOME OF THEM ARE QUITE MOVING, BUT IT'S
23 NOT PARTICULARIZED. IT IS PAINTED WITH A BROADER BRUSH THAN I
24 THINK HAS TO BE SHOWN BY WAY OF THE LAW.

25 MR. BROSNAMAN: MAY I ADDRESS THAT, YOUR HONOR? AND

1 MY STARTING POINT IS THAT THE GOVERNMENT -- THERE ARE 14
2 PEOPLE WITHOUT NAMES, WITHOUT PHYSICAL DESCRIPTIONS FROM
3 AGENTS WHO EVERYDAY WRITE IN THEIR REPORTS, "6 FOOT 2, MALE,
4 32 YEAR OF AGE, APPROXIMATELY, WHATEVER. THEY DO THAT SO
5 ROUTINELY THAT THIS BUILDING IS FILLED WITH THESE DOCUMENTS,
6 AND THEY STAND BEFORE YOU IN THIS MATTER AND SAY, THERE ARE 14
7 PEOPLE SOMEWHERE THAT WE SAW, BUT WE HAVE THE SPECIFICITY THAT
8 I THINK YOUR HONOR IS LOOKING FOR.

9 FOR EXAMPLE, IN ADDITION TO DR. ALCALAY WHO
10 DESCRIBES -- AND HERE'S THE MODEL, AND I MENTIONED THIS LAST
11 TIME. IF YOUR HONOR WOULD ACCEPT THE HYPOTHESIS THAT THE
12 ALLEGATIONS BY THE GOVERNMENT ARE THAT THERE WAS A VIOLATION,
13 BUT 93 PERCENT OF THE VIOLATIONS WARRANT MEDICAL NECESSITY, IF
14 THAT BE TRUE, IF THAT BE TRUE, THEN YOUR HONOR SITTING IN
15 EQUITY, IT SEEMS TO ME, WOULD BE SATISFIED.

16 AND HERE ARE THE SPECIFIC AFFIDAVITS: ROBERT
17 BERNARDI -- ALL OF THESE ARE MAY 21ST, BY THE WAY. WE DIDN'T
18 JUST THROW IN SOME APPEALING PEOPLE. THESE ARE ALL THE 21ST
19 OF MAY.

20 ROBERT BERNARDI, CANCER OF THE THROAT, CHEMO
21 THERAPY, NAUSEA, LOSES 40 POUNDS OVER A SIX-WEEK PERIOD. HE
22 HAS A DOCTOR. EVERYONE OF THESE AFFIDAVITS ARE PEOPLE WHO ARE
23 TREATED. THEY GO TO DOCTORS. AND A TRIAL, IF WE HAVE A
24 TRIAL, WILL ANYBODY THINK THAT ANY OF THESE SICK PEOPLE DON'T
25 GO WHEREVER THEY CAN GO TO GET HELP? IS THERE AN ARGUMENT BY

1 THE GOVERNMENT THAT THEY ARE NOT BEING TREATED, THAT THEY'RE
2 NOT BEING VIEWED BY THESE DOCTOR, AND THE DOCTORS AREN'T
3 SAYING TO THEM, "TRY THIS, TRY THAT, TRY THIS, THE OTHER
4 THING," HE'S BEEN -- HE CAN EAT WITH MARIJUANA, AND IT IS THE
5 BEST MEDICINE FOR HIS CONDITION IN HIS VIEW. THAT'S AGAINST
6 SILENCE FROM THE GOVERNMENT.

7 WE WIN THAT ONE.

8 ALBERT DUNHAM, H. I. V., TRIED MEDICINE, HAS
9 VOMITING. HE HAD A STEADY WEIGHT LOSS. HE HAS ONE MEAL EVERY
10 TWO DAYS. HE DESCRIBES HIS CONDITION WITH HIS FAMILY AND HIS
11 WIFE. HE TAKES MARIJUANA.

12 THERE IS IMPROVEMENT WITH BOTH PAIN AND INSOMNIA AND
13 ALSO THE ANXIETY. WE WIN THAT ONE.

14 KENNETH ESTES, QUADRIPLAGIC, CONSTANT PAIN,
15 TINGLING -- YOUR HONOR WAS NICE ENOUGH TO CONTINUE THE MATTER
16 WHEN I WAS ILL -- TINGLING IN THE HEAD IS A VERY FRIGHTENING
17 THING, AND SO I TOOK THE OPPORTUNITY TO PREPARE MY ARGUMENT ON
18 THIS, BECAUSE THE LAST TIME I WAS HEAR I THREW THE WORDS IN
19 THE AIR, "CHRONIC PAIN."

20 AND SO, KENNETH ESTES HAS TINGLING SOMETIMES, OR
21 REAL PAIN, SPASMS, BACK PROBLEMS.

22 WHEN HE TAKES MARIJUANA, THE PAIN IS BEARABLE.
23 BEFORE HE WANTED TO KILL HIMSELF. IS THERE NO SUCH PERSON?
24 THE GOVERNMENT DOESN'T ANSWER. THEY DON'T SAY, MR. ESTES
25 ISN'T ONE OF THOSE PEOPLE THERE. HE'S NOT IN THE 14.

1 THEY HAVE NO EVIDENCE, EVIDENTLY, THAT HE IS NOT IN
2 THE 14 SO HE TRIED -- HE'S TRIED FIVE NAMED DRUGS, WHICH HE
3 LISTS, VALIUM AND OTHERS, AND THEY ARE NOT AS GOOD. HE HAS A
4 MEDICAL NECESSITY DEFENSE.

5 THE COURT: DOES THE OAKLAND CANNABIS CLUB -- ARE
6 YOU SAYING THAT THE CLUB DOESN'T KNOW THE 14 PEOPLE -- AS I
7 UNDERSTAND IT, THE GOVERNMENT'S EVIDENCE SAID THAT IT WAS 15
8 MINUTES. THEY IDENTIFIED THE PERIOD OF TIME THAT THE AGENT
9 WAS THERE ON A PARTICULAR DAY.

10 MR. BROSNAHAN: 11:05 TO 11:20, SOMETHING LIKE THAT.

11 THE COURT: SOMETHING LIKE THAT. AND THAT THERE'S
12 14, OR SO TRANSACTIONS.

13 NOW, I ASSUME THAT THE OAKLAND CANNABIS CLUB, THEY
14 MAY NOT HAVE IT BY HOUR, BUT THEY HAVE IT PROBABLY BY DAY. DO
15 THEY NOT KNOW WHO THE PATIENTS ARE? IS THAT PART OF THE
16 PROBLEM?

17 MR. BROSNAHAN: I NEED TO BE CAREFUL HERE, BUT I
18 WOULD REPRESENT TO YOUR HONOR THAT AS TO THE TEN, THEY WOULD
19 HAVE NO IDEA AND HOW COULD THEY, TEN PEOPLE SOMEWHERE THERE'S
20 NO -- I MEAN, WHICH TEN? WHO'S THE GOVERNMENT TALKING ABOUT?

21 THE COURT: WELL, THEY ARE TALKING ABOUT TEN PEOPLE
22 WHO ON THAT DAY IN THE MORNING IN THEIR VIEW, BASED UPON THEIR
23 REPRESENTATIONS AND THEIR EXPERTISE, RECEIVED MARIJUANA AT THE
24 OAKLAND CANNABIS CLUB.

25 MR. BROSNAHAN: I DON'T THINK THERE IS ANY PRACTICAL

1 WAY FOR THE COOPERATIVE TO KNOW WHICH TEN THEY ARE TALKING
2 ABOUT, AND THAT WAS THE PROBLEM THAT WE FACE.

3 AS TO THE PRESS CONFERENCE, THAT'S A LITTLE
4 DIFFERENT. WE HAVE AFFIDAVITS AS TO PEOPLE THAT WERE AT THE
5 PRESS CONFERENCE. THERE WAS A TOTAL OF FOUR, AND WE HAVE
6 AFFIDAVITS WITH REGARD TO PEOPLE THAT ATTENDED THAT
7 CONFERENCE.

8 BUT IF YOUR HONOR WILL ALLOW ME, LAURA GALLI IS A
9 REGISTERED NURSE, AND SHE WORKS AT THE COOPERATIVE. SHE'S ILL
10 HERSELF. SHE DESCRIBES THE SCREENING PROCESS THAT GOES ON
11 WHERE THEY VERIFY THE DOCTORS, AND THEN SHE HAS SPECIFIC
12 PARAGRAPHS BASED UPON HER MEDICAL KNOWLEDGE ABOUT PEOPLE AND
13 THE PROBLEMS THAT THEY HAVE, AND THE SIDE EFFECTS FROM THE
14 MEDICINES, AND ALL OF THAT THAT IS GOING ON HERE.

15 SO THAT HER TESTIMONY, I COULD CERTAINLY BE -- IF
16 THE GOVERNMENT'S ONLY ANSWER IS, WE DON'T KNOW WHO IT IS AND
17 WE HAVE A TRIAL. HER TESTIMONY IS RELEVANT TO DESCRIBE THE
18 PROBLEMS THAT THE PEOPLE HAVE WHO COME IN THERE.

19 THERE ARE PEER REVIEW ARTICLES WHICH WE HAVE PUT IN,
20 THE NEW ENGLAND JOURNAL OF MEDICINE. IF THIS WAS A PRODUCTS
21 LIABILITY ABOUT MONEY, THERE WOULD BE NO QUESTION BUT THAT WE
22 WOULD HAVE SOME KIND OF A TRIAL, AT WHICH ABLE COUNSEL ON BOTH
23 SIDES WOULD FIGHT ABOUT THIS MEDICAL ISSUE.

24 AND HERE WE HAVE FROM THE AMERICAN MEDICAL JOURNAL,
25 FROM THE JOURNAL ON PHARMACOLOGY, THE JOURNAL OF NEW ENGLAND

1 JOURNAL OF MEDICINE, THE JOURNAL OF CLINICAL PHARMACOLOGY, THE
2 PSYCHOPHARMACOLOGY JOURNAL, WHICH HAS A LITTLE FRIGHTENING
3 TITLE, BUT IT'S A PEER REVIEW, LEGITIMATE PUBLICATION, AND
4 HERE'S AN IDEA OF VOICE, A MEDICAL VOICE, THAT SAYS THAT THE
5 PEOPLE THAT WILL BE TURNED AWAY IF YOUR HONOR CLOSES THIS CLUB
6 WILL GO WHERE? WHERE WILL THEY GO?

7 AND YOUR HONOR SITS IN EQUITY. YOU'RE ENTITLED TO
8 DO THE RIGHT THING HERE, AND THE GOVERNMENT HAS NO EVIDENCE
9 LIKE THIS AT ALL.

10 AND THE INTERVENORS ARE LISTED HERE. I WON'T
11 MENTION THE ONES FROM MARIN. OTHER COUNSEL MAY ADDRESS THOSE,
12 BUT THEY ARE HERE, AND THEY ARE DESCRIBED.

13 THERE IS EDWARD NEAL FROM OAKLAND, WHO HAS ARTHRITIS
14 SO BAD THAT HE USES A CANE, AND THE MARIJUANA WORKS FOR HIM.
15 HE'S GOING TO HAVE A LIVER TRANSPLANT.

16 THERE'S A MR. CARTON, FROM OAKLAND, AND THE EVIDENCE
17 THERE IS SIMILAR.

18 HAROLD SWEET, WHO DIDN'T GIVE A DATE -- THIS IS THE
19 ONLY ONE THAT I KNOW OF WHERE THERE IS NO DATE. HAROLD SWEET
20 HAS GLAUCOMA AND PRESSURE ON THE EYES, AND PAIN, AND THERE ARE
21 NO OTHER DRUGS THAT ALLEVIATE THAT.

22 YVONNE WESTBROOK, WHO I MENTIONED THE LAST TIME WHEN
23 I WAS HERE ON MAY 21ST WHO WAS AT THE PRESS COUNSEL, MULTIPLE
24 SCLEROSIS, IN A WHEELCHAIR, SPASTICITY; TAKES VALIUM, DOES NOT
25 WORK AS WELL; CHRONIC PAIN, HEADACHES, SLEEP.

1 AND THEN WE ASKED FOR JUDICIAL NOTICE OF ESTEEM
2 DOCTORS, AND MANY OF THEM WHO TESTIFIED ABOUT THE MEDICAL
3 ISSUES HERE, INCLUDING -- I'LL JUST TAKE ONE AS AN EXAMPLE --
4 ROBERT SCOTT. HE'S TREATED 300 HIV PATIENTS, AND THERE ARE
5 MINIMAL SIDE-EFFECTS FROM THE MARIJUANA, AND MARIJUANA IS
6 SUCCESSFUL FOR NAUSEA, ANXIOUSNESS, AND PAIN, AND ALL OF THAT.

7 NOW, WE HAVE PUT IN THE AIR MORE THAN ENOUGH TO
8 CREATE A TRIABLE ISSUE ON THE NECESSITY WITH REGARD TO THIS
9 PARTICULAR CASE. WE HAVE TRIED TO MEET IN SOME PRACTICAL WAY
10 THE GENERIC DESCRIPTION BY THE GOVERNMENT OF 14 PEOPLE, AND
11 THAT EVIDENCE -- AND NOW I'D LIKE, WITH YOUR HONOR'S
12 PERMISSION, TO JUST ANSWER SOME QUICK POINTS HERE THAT THE
13 GOVERNMENT TRIES TO MAKE. THAT EVIDENCE IS SUFFICIENT FOR US
14 TO GO FORWARD.

15 AND LET ME START WITH A CASE THAT I LIKE A LOT, THAT
16 THE GOVERNMENT THINKS IS THEIR BEST CASE, AND THAT'S THE DIANA
17 CASE. THEY TALKED ABOUT THE FIRST PART WHERE THE COURT WAS
18 THINKING ABOUT CONGRESS, AND ALL THAT, BUT LISTEN TO THE
19 DIFFERENCE. THAT JUDGE WAS THEY ARE CAREFUL. THAT JUDGE HAD
20 A DAULBERG HEARING ON THE 17TH OF DECEMBER OF THIS YEAR, IN
21 WHICH DOCTORS ON BOTH SIDES HAD TESTIFIED. AND FURTHER, HE
22 SAID THAT HE HELD OPEN THE IDEA THAT THE JURY IN THIS CRIMINAL
23 CASE MIGHT BE TOLD IF AN INSTRUCTION CAN BE CRAFTED WHAT THE
24 USE WAS THAT THE DEFENDANT WAS MAKING OF THIS MARIJUANA, AND
25 HE'S LEFT THAT OPENED. THAT SHOWS THE KIND OF SENSITIVITY OF

1 THIS PROBLEM THAT WE THINK IS APPROPRIATE.

2 THERE'S NO -- THERE'S NO USE OF MARINOL IN THAT
3 PARTICULAR CASE, UNLIKE SOME OF THE AFFIDAVITS THAT WE HAVE
4 HERE. IN THAT CASE, THE COURT FOUND THE DEFENDANT DID NOT TRY
5 ALTERNATIVES. IN FACT THE ONLY EVIDENCE, I THINK, WENT BACK
6 SOME 17 YEARS, OR SOMETHING LIKE THAT. AND SO THERE WAS NO
7 ALTERNATIVE ON THE FOURTH ELEMENT OF THE DEFENSE, AND THE
8 COURT TOOK THE TIME TO PUT THAT OUT THERE. THE --

9 THE COURT: WHEN YOU SAID THERE WAS NO ALTERNATIVE,
10 YOU MEAN --

11 MR. BROSNAHAN: MEDICAL ALTERNATIVE.

12 THE COURT: AND THAT THE DEFENDANT IN THE DIANA CASE
13 HADN'T OFFERED EVIDENCE ON HIS BEHALF OR IN HER BEHALF TO
14 DEMONSTRATE THAT HE COULD MEET THAT PRONG. ISN'T THAT WHAT
15 HAPPENED IN DIANA?

16 MR. BROSNAHAN: HE MAY HAVE TRIED TO OFFER
17 SOMETHING, BUT THE COURT FOUND THAT IT WAS JUST INADEQUATE,
18 AND HE HADN'T MADE A SHOWING OF ALTERNATIVE EFFORTS. WHEREAS,
19 THE AFFIDAVITS THAT ARE BEFORE YOUR HONOR, NOT ONLY GENERAL
20 ONES BY THE DOCTORS WHERE THEY TALK ABOUT ALTERNATIVES, BUT
21 THE SPECIFIC ONES BY THE PATIENTS TALKED ABOUT, "I TRIED THIS.
22 I TRIED THAT. IT DOESN'T WORK," WHICH IS A PREPONDERANCE OF
23 THE EVIDENCE FOR THE PURPOSE OF THE TRIAL.

24 FURTHER, THE GOVERNMENT ARGUES THAT WE HAVE AN
25 ALTERNATIVE. WE COULD TAKE AN APPEAL OR MODIFICATION. FROM

1 WHAT? YOU WEREN'T RULING ON THOSE THINGS. SO WHERE IS THE
2 ALTERNATIVE IN WHICH WE GO TO THE NINTH CIRCUIT ON THIS
3 NECESSITY POINT? SO THERE IS NO LEGAL ALTERNATIVE HERE.

4 AND THEN THEY SAY, "WELL, BUT CONGRESS ABROGATED
5 THIS." AND THAT'S A NON-STARTER, AND I KNOW THE JUDGE TALKS
6 ABOUT THAT IN DIANA.

7 THE REASON IT'S A NON-STARTER IS, FIRST AND
8 FOREMOST, IT'S NEVER BEEN LITIGATED ANY OF THE H.I.V. WASTING
9 CASES, AND CONGRESS DOES NOT ADDRESS THEM. BUT MORE IMPORTANT
10 THAN THAT, CONGRESS IN EVERY CASE WHERE NECESSITY IS RAISED,
11 THERE IS A STATUTE, AND THE STATUTE MAY BE VERY SPECIFIC OR IT
12 MAY BE VERY BROAD. IN A MURDER CASE, THERE ACTUALLY HAVE BEEN
13 NECESSITY DEFENSES EXAMPLE. THERE IS A STATUTE WHICH SAYS YOU
14 CAN'T LEAVE A PRISON. THEY KIND OF INSIST ON IT. IT'S PRETTY
15 IMPORTANT, BUT IT'S SPECIFIC. YOU'RE IN JAIL. YOU'RE A
16 PRISONER OF THE STATE, YOU CAN'T LEAVE THERE. CONGRESS
17 DECIDED IT FOR THE FEDERAL PRISONERS. THE LEGISLATURE AND THE
18 GOVERNOR OF CALIFORNIA DECIDED IT FOR THE STATE PEOPLE. THEN
19 HOW CAN THERE BE A NECESSITY DEFENSE?

20 THE COURT: WELL, THERE IS. I MEAN, IN THE PRISON
21 CASES, THAT'S THE SUPREME COURT CASE, JUDGE REHNQUIST DIDN'T
22 SAY THAT IF THE PRISON IS ON FIRE -- I DON'T KNOW MAYBE THAT
23 MAY NOT BE THE SAME CASE, BUT THIS IS A CASE --

24 MR. BROSNAHAN: THAT YOU CAN LEAVE.

25 THE COURT: SORRY?

1 MR. BROSNAHAN: IF IT IS ON FIRE, I THINK HE SAID,
2 YOU CAN LEAVE.

3 THE COURT: BECAUSE THERE IS A COMMON LAW DEFENSE TO
4 CONFINEMENT UNDER THE CIRCUMSTANCES, AND I THINK YOU MAY HAVE
5 A BETTER ARGUMENT. WHAT I WAS GOING TO ASK THE GOVERNMENT IS,
6 AND MAYBE IT MAY OR MAY NOT BE RELEVANT BY CONSIDERATION, BUT
7 IF CONGRESS CAN, BY STATUTE, ABROGATE A COMMON LAW DEFENSE,
8 WHY DIDN'T THEY SAY IT? THEY SAID IT IN SIX WORDS, AND THEY
9 DIDN'T SAY IT HERE.

10 MR. BROSNAHAN: BECAUSE THEY DIDN'T HAVE THE WORDS
11 FOR IT. THEY WOULD LEAVE IT TO A FEDERAL JUDGE TO WORRY ABOUT
12 IT.

13 THE COURT: I'M NOT SURE THEY DON'T HAVE THE WORDS.

14 MR. BROSNAHAN: I THINK, THERE IS -- WELL, I
15 WITHDRAW THAT. I HAVE NO IDEA, BUT THERE IS IN THE LANDMARK
16 CASE A STRONG INJUNCTION TO YOUR HONOR TO TAKE A LOOK AT THE
17 LEGISLATIVE HISTORY HERE, AND THAT IS ONE OF THE THINGS THAT
18 NEEDS TO BE DONE, AND WE HAVE SUGGESTED THAT IN OUR BRIEF.

19 THE GOVERNMENT TALKS ALSO THAT WHEN YOUR HONOR
20 GRANTED THE INJUNCTION, YOU TALKED ABOUT, CORRECTLY I THINK,
21 THAT NECESSITY CAN'T BE USED ON A BLANKET BASIS TO PREVENT AN
22 INJUNCTION, BUT THAT'S NOT WHERE WE ARE NOW; AND THIS IS VERY
23 DIFFERENT AS I SEE IT.

24 IF THE COURT WOULD ALLOW ME, I WOULD JUST MAKE A
25 POINT THAT I THINK IT GOES RIGHT TO THIS.

1 IF THERE WERE ONE VIOLATION ON A GIVEN DAY AND
2 SUPPOSE THEY EVEN NAME THE PERSON. JOHN JONES WENT INTO THE
3 COOPERATIVE AND PURCHASED MARIJUANA AND CAME BACK OUT. AND
4 THEN WE CAME IN AND WE SAID, "ALL RIGHT. MR. JONES HAS THESE
5 PROBLEMS. DOCTORS ASSESSED HIS SITUATION," AND THERE IS A
6 NECESSITY DEFENSE, THERE WOULD BE NO VIOLATION. I'M ASSUMING
7 AS I ARGUE HERE THIS AFTERNOON THAT THE WHOLE INTENDMENT OF
8 YOUR HONOR'S MEMORANDUM AND OPINION, AS PUBLISHED, WAS THAT
9 THAT IF THERE WAS A NECESSITY DEFENSE FOR THAT ONE PERSON,
10 THAT THERE WOULD BE NO VIOLATION. I HOPE THAT'S RIGHT.

11 THE COURT: AS TO THAT ONE PERSON.

12 MR. BROSNAHAN: AS TO THAT ONE PERSON. AND IF
13 THAT'S ALL THE GOVERNMENT HAD, THEN WE COULD ALL GO HOME.

14 THE COURT: LET ME PUT IT THIS WAY: YOU SAY THE
15 INTENT. I THINK THE ANSWER IS, AT LEAST WHAT I THINK THE
16 ANSWER IS, IS THAT THE DEFENSE IN THAT PARTICULAR CASE ON
17 THOSE PARTICULAR FACTS CAN BE PRESENTED TO THE TRIER OF FACT
18 TO MAKE A JUDGMENT --

19 MR. BROSNAHAN: YES, YOUR HONOR, CORRECT.

20 THE COURT: -- AS TO WHETHER OR NOT THAT CONSTITUTED
21 A DEFENSE TO THE VIOLATION OF THE INJUNCTION.

22 MR. BROSNAHAN: THAT'S BETTER. THAT'S THE WAY TO
23 PUT IT, AND THAT'S RIGHT, AND THAT'S A JURY TRIAL.

24 THEN IF THEY HAVE TWO, AND THEY ARE A NECESSITY
25 DEFENSE OR, MORE ACCURATELY -- YOUR HONOR IS HELPFUL IN THIS

1 REGARD -- MORE ACCURATELY, THERE IS SOME EVIDENCE TO INDICATE
2 THAT THERE IS A FACTUAL QUESTION HERE ABOUT WHETHER THE TWO
3 PEOPLE HAVE THE MEDICAL NECESSITY, AND THE SAME WITH 14.

4 WE HAVE THAT KIND OF EVIDENCE BEFORE YOUR HONOR. WE
5 WILL HAVE PATIENTS. WE WILL HAVE DOCTORS. WE WILL HAVE
6 RATIONAL EVIDENCE. AND ON THESE ISSUES THE WAY THE SITUATION
7 IS, THE GOVERNMENT HAS NOT PROVIDED YOU WITH A RECORD, REALLY,
8 AS WE SEE IT IN WHICH YOU CAN SAY, "WELL, WHEN YOU BALANCE THE
9 EVIDENCE UNDER AGUILAR AND PETERSON, TO GO BACK TO THE
10 ORIGINAL POINT, THAT THERE IS NO CASE HERE TO BE TRIED.

11 I THINK THAT I HAVE REALLY COVERED ON MEDICAL
12 NECESSITY THE HEART OF OUR CASE. WHEN WE'RE TOLD 14 WITHOUT
13 NAMES, NONETHELESS, WE GO AHEAD AND PRESENT A NUMBER OF
14 AFFIDAVITS AND THE TIME AND THE DATE WITH PEOPLE, AND WE SHOW
15 THAT THEY HAVE A MEDICAL NECESSITY DEFENSE.

16 AND AT THIS STAGE IN THE PROCEEDINGS, WHERE THE ONLY
17 QUESTION IS: SHOULD YOUR HONOR DO THAT WHICH PETERSON SAYS IS
18 VERY RARE? SHOULD YOU FIND -- NOT ONLY FIND THAT THE OAKLAND
19 CANNABIS COOPERATIVE HAS VIOLATED YOUR ORDER DESPITE THE
20 NECESSITY PART OF THIS WITHOUT A HEARING AND WITHOUT A TRIAL,
21 SHOULD YOU DO ALL OF THAT AND THEN BASED ON THAT FOUNDATION,
22 AS WE SEE IT -- THERE IS NO FOUNDATION THERE -- CLOSE THE CLUB
23 THAT WILL TURN PEOPLE AWAY -- AND I WON'T REPEAT IT -- WHO
24 HAVE THE MEDICAL CONDITIONS AND THE MEDICAL NECESSITIES THAT
25 ARE HERE?

1 AND ON THE SUBSTANTIVE DUE PROCESS SIDE, YOUR HONOR,
2 I'M NOT REALLY TRYING TO GET INTO IT, EXCEPT TO SAY -- EXCEPT
3 TO SAY, THAT IT WAS THAT KIND OF ARGUMENT THAT ROUSED
4 DIFFERENT SENSIBILITIES BY FIVE MEMBERS OF THE SUPREME COURT:
5 PAIN VERSUS GOVERNMENT IS THIS CASE. CAN THE GOVERNMENT
6 INSIST ON PAIN? AND THAT'S THIS CASE.

7 THE COURT: IF -- WHAT FACTUAL ISSUES ARE THERE FOR
8 RESOLUTION IF IN FACT A MEDICAL NECESSITY DEFENSE IS NOT
9 PERMITTED? IF I RULE -- IF I GRANTED THE GOVERNMENT'S MOTION
10 IN LIMINE ON THESE ISSUES, WHAT, THEN, AS IT RELATES TO
11 OAKLAND -- BECAUSE I THINK MARIN MAY BE IN A DIFFERENT
12 ISSUE -- WHAT THEN IS THERE TO BE ADJUDICATED IN TERMS OF
13 OAKLAND, IN TERMS OF ISSUES OF FACT?

14 MR. BROSNAHAN: YOU MEAN IF YOU GRANT THE --

15 THE COURT: LET'S SAY, IN WEIGHING YOUR ARGUMENT, I
16 BELIEVE YOU HAVE NOT MET YOUR BURDEN WITH RESPECT TO THE
17 DEFENSE OF NECESSITY AS PRESENTED, SO I GRANT THE MOTION IN
18 LIMINE. LET'S ASSUME IF -- I'M NOT GOING TO DECIDE IT NOW.
19 LET'S ASSUME I DID. WHAT OTHER ISSUES OF FACT ARE THERE FOR
20 THE TRIER OF FACT TO ADJUDICATE IN THIS CASE?

21 MR. BROSNAHAN: SUBSTANTIVE DUE PROCESS, JOINT USER.

22 THE COURT: NOW, LET'S ASSUME THOSE ARE THE THREE
23 AFFIRMATIVE DEFENSES THAT HAVE BEEN PRESENTED. LET'S ASSUME
24 THAT I RULED THAT ALL THREE OF THEM ARE INADEQUATE AS A MATTER
25 OF LAW, AS A MATTER OF FACT AS TO WHAT'S PRESENTED. THEN WHAT

1 REMAINS TO BE ADJUDICATED IN TERMS OF WHETHER OR NOT THE
2 INJUNCTION IS VIOLATED AS IT RELATES TO THE OAKLAND CANNABIS
3 CLUB?

4 AS IT RELATES TO THE MARIN CANNABIS CLUB, I
5 UNDERSTAND, OR MAYBE IT'S CALLED THE MARIN ALLIANCE, I MAY BE
6 MISQUOTING IT, BUT I UNDERSTAND THAT THEY TAKE THE POSITION
7 THAT NOBODY SAW MARIJUANA BEING FURNISHED. THAT PEOPLE WHO
8 CAME OUTSIDE, NOBODY SAW IT FURNISHED. NOBODY SAW FROM
9 EXACTLY WHAT LOCATION IT WAS FURNISHED. THOSE WERE PROHIBITED
10 ACTS, BUT IT'S NOT THERE. IT'S NOT IN THE RECORD.

11 OKAY. I DON'T KNOW THAT OAKLAND IS SAYING THE SAME
12 THING, BUT, OBVIOUSLY, THAT WOULD BE AN ISSUE OF FACT.

13 MR. BROSNAHAN: WE ARE TO THIS EFFECT, AND THAT IS,
14 THE PAUCITY OF THE GOVERNMENT'S EVIDENCE IN THE FIRST PLACE.
15 IN OTHER WORDS, HAVE THEY LAID A SUFFICIENT PREDICATE BASED
16 UPON THEIR EVIDENCE -- THEY ARE THE MOVING PARTY -- CLEAR AND
17 CONVINCING EVIDENCE TO SHOW VIOLATION?

18 THE COURT: WHAT IS THE ISSUE OF FACT? I APPRECIATE
19 WHAT YOU ARE SAYING. YOU'RE REALLY SAYING THAT THEY SIMPLY
20 HAVEN'T MET THEIR BURDEN.

21 MR. BROSNAHAN: THEY HAVEN'T.

22 THE COURT: OKAY. THAT'S ONE, WHETHER THEY MET THE
23 BURDEN OR NOT.

24 THE SECOND ISSUE IS, WELL, I'LL TELL YOU WHY THEY
25 HAVEN'T MET THEIR BURDEN, BECAUSE THEY SAY A; AND YOU SAY B.

1 IS THERE SOMETHING OUT THERE THAT'S FAVORED B, ONCE THE
2 AFFIRMATIVE DEFENSES ARE EXCLUDED?

3 MR. BROSNAHAN: I DON'T THINK THERE'S ANY A, IF THE
4 COURT PLEASE. AND THE LAST TIME I WAS HERE, YOUR HONOR PUT
5 THE MATTER OVER FOR TWO DAYS FOR THE ORDER TO SHOW CAUSE, AND
6 I MISTAKENLY UNDERSTOOD FROM THE GOVERNMENT'S POSITION, NOT
7 THAT THEY SAID -- THEY DIDN'T MISREPRESENT THIS. I DON'T
8 THINK THEY SAID IT, BUT I THOUGHT WHAT THEY WERE GOING TO DO
9 WAS PRESENT MORE EVIDENCE. I DIDN'T THINK THEY WERE GOING TO
10 GO AHEAD WITH AN ORDER TO SHOW CAUSE.

11 THE COURT: WELL, I ASKED THEM TO LAY OUT, IN AS
12 MUCH DETAIL AS POSSIBLE, ALL THE EVIDENCE THAT THEY WOULD
13 PRODUCE AT A CONTEMPT HEARING.

14 MR. BROSNAHAN: AND THAT'S BEFORE US NOW, AND IT'S
15 NOT ANY DIFFERENT THAN WHAT WAS HERE LAST TIME AS FAR AS I
16 KNOW.

17 THE COURT: BUT I UNDERSTAND YOUR ARGUMENT THAT IT
18 IS INADEQUATE.

19 MR. BROSNAHAN: IT IS.

20 THE COURT: BUT I REALLY WANT TO KNOW YOUR
21 ARGUMENT -- I DON'T KNOW IF YOU REALLY GAVE ME ONE -- AS TO
22 WHETHER OR NOT THERE IS A FACTUAL ISSUE IN DISPUTE BETWEEN YOU
23 AND THE GOVERNMENT ON ANY MATTER OTHER THAN THE AFFIRMATIVE
24 DEFENSES.

25 MR. BROSNAHAN: WELL, THE ADEQUACY OF THEIR

1 EVIDENCE, WE THINK, IS INADEQUATE. YOUR HONOR HAS COVERED
2 THAT AND IS NOW MOVING TO A SECOND QUESTION, WHICH IS THE
3 ISSUE OF WHETHER, IF THAT EVIDENCE WAS ADEQUATE, IS THERE AN
4 ISSUE FOR VIOLATION OF THE INJUNCTION OR NOT. AND I'M HAVING
5 A BIG PROBLEM GETTING PAST INADEQUACY, AND THAT'S AS FAR AS I
6 CAN SEE AT THE MOMENT.

7 THE COURT: OKAY.

8 MR. BROSNAHAN: THANK YOU, YOUR HONOR.

9 THE COURT: THANK YOU VERY MUCH.

10 I'D LIKE TO HEAR FROM THE GOVERNMENT.

11 YOU SEE, MR. QUINLIVAN, NOTWITHSTANDING

12 MR. BROSNAHAN'S ILLNESS, HE DOESN'T NEED A MICROPHONE.

13 MR. BROSNAHAN: I'M RESTED.

14 MR. QUINLIVAN: THANK YOU, YOUR HONOR. GOOD
15 AFTERNOON AGAIN.

16 I THINK I'M COMPELLED THIS AFTERNOON TO START WITH A
17 DECISION THE SUPREME COURT RENDERED FIFTY YEARS AGO, WHICH IS
18 THE MAGIO VERSUS ZEETS (PHONETIC) CASE. WHAT THE COURT,
19 JUSTICE JACKSON, IN FACT WROTE FOR THE COURT IN THAT CASE WAS,
20 QUOTE, "IT WOULD BE A DISSERVICE TO THE LAW FOR US TO ALLOW A
21 CONTEMPT PROCEEDING TO -- TO ALLOW IN A CONTEMPT PROCEEDING
22 THE UNDERLYING LEGAL OR FACTUAL ISSUES TO BE THE SUBJECT OF
23 RECONSIDERATION."

24 AND, YOUR HONOR, I THINK THAT THE DEFENDANTS'
25 PRESENTATION HERE TODAY DEMONSTRATES THAT WHAT THE SUPREME

1 COURT WARNED AGAINST A HALF CENTURY AGO WAS EXACTLY WHAT HAD
2 OCCURRED HERE.

3 NOTWITHSTANDING THE ASSERTIONS THAT HAVE BEEN MADE
4 BY COUNSEL, THE OAKLAND DEFENDANTS HAVE NOT SHOWN THAT EACH
5 AND EVERY PERSON TO WHOM THEY DISTRIBUTED MARIJUANA ON MAY
6 21ST MEET ANY OF THE AFFIRMATIVE DEFENSES THAT THEY ASSERT.

7 AND I THINK THAT BOTH YOUR HONOR AND ABLE COUNSEL
8 HAS MENTIONED THE NINTH CIRCUIT'S DECISION IN THE AGUILAR
9 CASE, AND I THINK IT IS CONTROLLING HERE, BECAUSE WHAT THE
10 NINTH CIRCUIT SAID IN AGUILAR IS THAT GENERALIZED STATEMENTS
11 REGARDING THE CONDITIONS IN THAT CASE, POLITICAL CONDITIONS IN
12 CENTRAL AMERICAN NATIONS, OR EVIDENCE REGARDING THE SCREENING
13 PROCEDURES THAT THE DEFENDANTS HAVE UNDERTAKEN TO SATISFY
14 THEMSELVES THAT THE ALIENS IN THAT CASE THAT THEY WERE SEEKING
15 TO PROTECT MET THE NECESSITY OF DEFENSE, THAT THAT SORT OF
16 EVIDENCE FAILED FOR LACK OF SPECIFICITY. AND, MOREOVER, WHAT
17 THE DEFENDANTS HAD TO SHOW WAS THAT THE PARTICULAR ALIENS
18 ASSISTED MET THE TEST.

19 AND THAT'S WHAT THE OAKLAND DEFENDANTS AND, FOR THAT
20 MATTER, THE MARIN DEFENDANTS HAVE FAILED TO SHOW WITH RESPECT
21 TO THE DEFENSE OF NECESSITY.

22 NOW, I DO WANT TO ADDRESS THAT FACTUAL SHOWING, BUT
23 I WANT TO GO TO THE LEGAL ISSUES, FIRST, BECAUSE I DO THINK
24 THAT THAT'S WHERE THE COURT SHOULD BEGIN ITS ANALYSIS, AND I
25 THINK THAT THE -- WHEN WE WERE BEFORE YOUR HONOR ON AUGUST

1 31ST, YOU MENTIONED THAT NO FEDERAL COURT HAD ADOPTED OUR
2 ARGUMENT THAT CONGRESS, AS A MATTER OF LAW, HAD PRECLUDED THE
3 NECESSITY DEFENSE.

4 AND WE NOW HAVE THE UNITED STATES VERSUS DIANA CASE
5 THAT HAS ADOPTED THIS VERY ANALYSIS, AND I THINK THAT THE
6 COURT'S REASONING IS REALLY PERSUASIVE HERE, BECAUSE THIS IS
7 NOT A CASE, AS COUNSEL SUGGESTS, THAT ALL CONGRESS HAS DONE IS
8 SAY IN SECTION 841(A)(1), IT IS UNLAWFUL TO DISTRIBUTE, OR
9 MANUFACTURE, OR POSSESS WITH THE INTENT TO DISTRIBUTE OR
10 MANUFACTURE MARIJUANA.

11 CONGRESS, SEPARATE AND APART FROM THIS PROVISION,
12 CONGRESS DETERMINED IN SECTION 812 OF THE ACT THAT MARIJUANA,
13 AS WITH ALL OTHER SUBSTANCES IN SCHEDULE I, HAS NO ACCEPTED
14 MEDICAL VALUE AND HAS A LACK OF ACCEPTED SAFETY FOR USE IN THE
15 UNITED STATES.

16 AND IN ADDITION TO THAT, YOUR HONOR, RECOGNIZING
17 THAT THERE ARE CHANGES IN THE SCIENTIFIC AND MEDICAL EVIDENCE
18 THAT MIGHT DEVELOP OVER TIME, CONGRESS PROVIDED FOR AN
19 EXCLUSIVELY ADMINISTRATIVE PROCESS WHERE A SUBSTANCE IN
20 SCHEDULE I, OR ANY OTHER SCHEDULE, COULD BE RESCHEDULED; AND
21 THAT, OF COURSE, IS THE SECTION 811 PROCESS.

22 AND CONGRESS ALSO PROVIDED FOR RESEARCH PROJECTS
23 UNDER SECTION 823(F) FOR SUBSTANCES IN SCHEDULE I.

24 NOW, TAKING ALL OF THAT INTO ACCOUNT, WHAT THE DIANA
25 COURT SAID AND WHAT THE COURT SHOULD CONCLUDE HERE IS THAT

1 CONGRESS HAS CONSIDERED THE POSSIBILITY OF A MEDICAL VALUE FOR
2 MARIJUANA OR OTHER SUBSTANCES IN SCHEDULE I, AND CONGRESS HAS
3 DETERMINED THAT THEY ARE NOT AVAILABLE.

4 THE COURT: DO I HAVE TO REACH THAT ISSUE? I MEAN,
5 IF I DO REACH THAT ISSUE -- FIRST OF ALL, DO I HAVE TO, AND IF
6 I DO, DO I HAVE TO FIGURE OUT WHETHER THAT'S REASONABLE?
7 ISN'T THAT ONE OF THE ISSUES THAT I SAID IN MY EARLIER
8 OPINION? IT SEEMS TO ME THAT A PERSON WHO IS DYING, WHO IS
9 SUFFERING FROM A VERY SERIOUS MEDICAL DISABILITY, DOESN'T HAVE
10 THE LUXURY OF PETITIONING CONGRESS WHICH ACTS AT HIS OWN
11 DETERMINATIVE FEET TO GET THE SORT OF RELIEF THAT WE'RE
12 TALKING ABOUT.

13 INTERESTINGLY ENOUGH IN THE AGUILAR CASE, WHEN THEY
14 TALKING ABOUT REASONABLE ALTERNATIVES, THEY WERE TALKING ABOUT
15 REASONABLE ALTERNATIVES THAT ARE RATHER QUICK. IN OTHER
16 WORDS, A PERSON COULD EITHER GO TO THE COURT AND SOMETHING
17 COULD HAPPEN, PERHAPS, GO TO I.N.S., AND SOMETHING COULD
18 HAPPEN. THERE WERE THOSE IMMEDIATE, IMMEDIATE REMEDIES THAT
19 WERE AVAILABLE; AND, OF COURSE, THEY WERE NOT PURSUED IN ANY
20 PARTICULAR CASE.

21 SO I WONDER, IS THAT THE PATH THE GOVERNMENT REALLY
22 WANTS ME TO GO DOWN ON, TO SAY, LOOK, CONGRESS, FOR ALL
23 INTENTS AND PURPOSES, HAS EXCLUDED THE DEFENSE OF NECESSITY?

24 AND BY THE WAY, ON THAT ISSUE, DO YOU REALLY THINK
25 THAT A PERSON WHO IS IN THEIR LAST DAYS OF LIFE, IN EXTREME

1 PAIN AND USES MARIJUANA WOULD NOT -- AND THE GOVERNMENT THEN
2 DECIDES TO PROSECUTE THAT PERSON OR THE CAREGIVER, WOULDN'T HE
3 BE ALLOWED THE DEFENSE OF NECESSITY? I MEAN, ISN'T IT CLEAR
4 THAT IN ORDER FOR YOU TO BE RIGHT ON THE FENCE OF NECESSITY,
5 WE HAVE TO SAY THAT CONGRESS THOUGHT ABOUT EVERY CONCEIVABLE
6 CASE IN WHICH A DEFENSE OF NECESSITY WOULD BE URGED AND THAT
7 HAS RULED IT OUT?

8 AND, FINALLY, WHAT I SAY IS, LOOK, IF CONGRESS
9 WANTED TO RULE OUT THE DEFENSE OF NECESSITY, IT COULD PUT
10 TOGETHER THE EIGHT WORDS THAT WOULD DO IT IN THE STATUTE.
11 THEY DON'T SAY IT, "AND FOR THIS VIOLATION OF THE LAW, NO
12 DEFENDANT SHALL BE ABLE TO RAISE THE COMMON LAW DEFENSE OF
13 NECESSITY." SO WHY DO I HAVE TO GO DOWN THAT ROAD? IT SEEMS
14 TO ME THAT IT IS FRAUGHT WITH A NUMBER OF STEPS THAT I HAVE TO
15 TELL YOU I'M NOT AT ALL COMFORTABLE IN REACHING BECAUSE I'M
16 NOT SURE THEY ARE RIGHT. I'M JUST NOT SURE THEY ARE RIGHT.

17 MR. QUINLIVAN: WELL, YOUR HONOR, LET ME RESPOND.

18 FIRST OF ALL, I THINK, THAT ALTHOUGH YOUR HONOR
19 COULD REACH THAT ISSUE, IT'S NOT NECESSARY FOR THE RESOLUTION
20 OF THIS, BECAUSE I THINK THERE ARE OTHER ISSUES FACTUALLY AND
21 LEGALLY THAT COMPEL THE CONCLUSION THAT THE MEDICAL NECESSITY
22 DEFENSE ISN'T AVAILABLE HERE.

23 BUT I DID WANT TO TAKE ISSUE WITH ONE POINT. IT'S
24 NOT THAT CONGRESS SAID THAT THE SECTION 811 PROCESS IS THE
25 REASONABLE LEGAL ALTERNATIVE. THAT, IN EFFECT, PRESUMES THAT

1 THE MEDICAL NECESSITY DEFENSE IS APPLICABLE AS AN INITIAL
2 MATTER.

3 THE QUESTION IS WHETHER OR NOT CONGRESS ALLOWED FOR
4 THE POSSIBILITY FOR SOMEONE IN ANY PROCEEDING TO SAY, YES,
5 THERE IS A MEDICAL USE FOR MARIJUANA OUTSIDE OF THE EXCLUSIVE
6 PROCESS THAT IT HAS DEVELOPED.

7 AND AS THE DIANA COURT QUITE PROPERLY CONCLUDED, THE
8 ANSWER HAS TO BE NO.

9 NOW, LET ME MOVE ON TO ANOTHER POINT, WHICH IS ALSO
10 WHAT -- COMPELLED BY THE NINTH CIRCUIT'S DECISION IN THE
11 AGUILAR CASE, BECAUSE WHAT THE NINTH CIRCUIT SAID THERE WAS
12 THAT THE DEFENDANTS COULD HAVE PETITIONED THE COURT. THAT IS
13 A REASONABLE, LEGAL ALTERNATIVE, AND THEY COULD HAVE SOUGHT
14 EXPEDITED RELIEF IN THE COURT WHICH WOULD HAVE ALAY ANY
15 CONCERNS THAT THEY MIGHT HAVE HAD REGARDING THE NEED FOR
16 IMMEDIATE RELIEF.

17 AND THAT'S PRECISELY WHAT THE DEFENDANTS COULD HAVE
18 DONE IN THIS CASE, NOTWITHSTANDING THE FACT THAT, OF COURSE,
19 THEY COULD HAVE TAKEN AN APPEAL. THEY COULD HAVE MOVED YOUR
20 HONOR, OF COURSE, TO MODIFY THE PRELIMINARY INJUNCTION TO
21 ALLOW FOR THE DISTRIBUTION OF MARIJUANA IN A PARTICULAR
22 INSTANCE, AND THEY COULD HAVE SOUGHT EXPEDITED RELIEF FROM
23 YOUR HONOR, AND I THINK THE RECORD IN THIS CASE CLEARLY SHOWS
24 THAT BOTH SIDES ARE QUITE FAMILIAR WITH THE EX-PARTE PROCESS
25 BEFORE YOUR HONOR.

1 SO THERE CAN BE NO DISPUTE THAT THAT WAS A
2 REASONABLE LEGAL ALTERNATIVE AVAILABLE TO THE DEFENDANTS.
3 THEY CHOSE NOT TO PURSUE THIS AVAILABLE AVENUE, BUT THE
4 DECISION IS NOT UNDER A NECESSITY ANALYSIS WHETHER OR NOT THEY
5 WANTED TO PURSUE THIS.

6 THE NECESSITY ANALYSIS REQUIRES THE DEFENDANT OR THE
7 ALLEGED CONTEMPTOR TO PURSUE ANY POSSIBLE REASONABLE LEGAL
8 ALTERNATIVE, AND THERE CAN BE NO DISPUTE THAT THEY COULD HAVE
9 COME IN BEFORE YOUR HONOR AND ASKED TO MODIFY THE INJUNCTION
10 IN THAT REGARD.

11 BUT THAT JUST BRINGS ME TO THE EVIDENTIARY SHOWING
12 THAT THE OAKLAND CLUB AND THE MARIN CLUB HAVE MADE, AND THE
13 SAME CONCLUSION IS REACHED IN THIS CASE, YOUR HONOR. AND I
14 POINT, AGAIN, TO WHAT THE EASTERN DISTRICT OF WASHINGTON
15 CONCLUDED IN THE DIANA CASE, BECAUSE I THINK COUNSEL HAS
16 STATED THAT IN CONTRAST TO THE SITUATION IN DIANA WHERE THE
17 DEFENDANT HAD NOT TRIED TO TAKE MARINOL. FOR INSTANCE, THEIR
18 DECLARATIONS ARE FULL OF EVIDENCE THAT THE DECLARANTS HAD
19 TRIED MARINOL.

20 WELL, I ASK YOUR HONOR TO GO BACK AND REVIEW THOSE
21 DECLARATIONS, BECAUSE WITH THE EXCEPTION OF DR. ALCALAY, NOT A
22 SINGLE ONE OF THE DECLARATIONS THAT THE DEFENDANTS HAVE
23 SUBMITTED MAKE ANY DISCUSSION OF THE FACT THAT THEY HAD TRIED
24 MARINOL AS AN AVAILABLE LEGAL ALTERNATIVE, AND THAT COMPELLED
25 IN PART THE DIANA'S COURT CONCLUSION THAT THE DEFENDANT HAVE

1 FAILED TO MADE THE REQUIRED EVIDENTIARY SHOWING.

2 AND WITH RESPECT, I POINT ALSO TO WHAT THE DIANA
3 COURT MENTIONED, THE 823(F) PROCESS, THAT IF THERE IS A
4 RESEARCH PROJECT THAT'S AVAILABLE, A PERSON ASSERTING A
5 NECESSITY DEFENSE MUST SHOW THAT THEY TRIED TO BECOME A PART
6 OF THAT RESEARCH PROJECT, AND THAT, OF COURSE IS THE SAME
7 CONCLUSION THAT THE SIXTH CIRCUIT REACHED IN THE BURTON CASE,
8 WHICH WE TALKED ABOUT AGAIN THIS PAST AUGUST 31ST, AND THERE
9 IS A RESEARCH PROJECT THAT'S GOING ON RIGHT NOW IN THE SAN
10 FRANCISCO BAY AREA TO BE SURE IT'S LIMITED TO PEOPLE WITH H.
11 I. V. AND AIDS. AND SO THIS MAY BE LIMITED TO THOSE PATIENTS
12 WHO ARE SUFFERING FROM THOSE GRAVE CONDITIONS.

13 BUT AGAIN, EVEN WITH RESPECT TO DR. ALCALAY, AND
14 WITH RESPECT TO ALL THE OTHER DEFENDANTS WHO ARE SUFFERING
15 FROM THESE TERRIBLE CONDITIONS, THERE IS NO ASSERTION THAT
16 THEY TRIED TO BECOME PART OF THE SECTION 823(F) PROCESS.

17 THIS, I THINK, SHOWS THE LACK OF SPECIFICITY THAT
18 THE DECLARATIONS PROVIDED BY THE OAKLAND CLUB HAVE WITH
19 RESPECT TO THE ELEMENTS NECESSARY FOR A NECESSITY DEFENSE, AND
20 COUNSEL HAS POINTED INSTEAD TO EVIDENCE REGARDING THE
21 SCREENING PROCEDURES THAT THEY HAVE UNDERTAKEN, POINTED TO THE
22 DECLARATION OF THE REGISTERED NURSE ABOUT HER GENERAL
23 STATEMENT OR GENERALIZED REVIEW OF THE INTAKE PROCEDURES AT
24 THE OAKLAND CLUB.

25 AND, AGAIN, YOUR HONOR, THAT IS EXACTLY THE KIND OF

1 ARGUMENT THAT WAS MADE IN THE AGUILAR CASE, AND THE NINTH
2 CIRCUIT THERE SAID THAT ANY ASSERTIONS REGARDING THE SCREENING
3 PROCEDURES, LACK OF SPECIFICITY BECAUSE ALL THAT ESTABLISHES
4 IS THE ALLEGED CONTEMPTNOR'S VIEW OF THE EVIDENCE. IT DOESN'T
5 MEET THAT WHICH THE NECESSITY DEFENSE REQUIRES.

6 THE COURT: WHAT ABOUT THE MARIN CLUB?

7 MR. QUINLIVAN: I THINK WITH RESPECT TO MARIN, YOUR
8 HONOR, THERE ARE TWO THINGS:

9 FIRST OFF, I THINK THAT THE DECLARATION BY THE
10 SPECIAL AGENT IN THE CASE DOES ESTABLISH THAT HE WATCHED 14
11 PERSONS GOING INTO THE MARIN ALLIANCE. THERE ARE OTHER PLACES
12 OF BUSINESS AND THE LOCATION, I THINK IT'S 6 SCHOOL STREET
13 PLAZA, BUT I THINK THE EARLIER DECLARATIONS THAT WERE
14 SUBMITTED AT THE PRELIMINARY INJUNCTION STAGE, YOUR HONOR,
15 ESTABLISHED THAT ALL OF THESE ROOMS HAVE AN OUTSIDE LOCATION.
16 SO IT IS, CERTAINLY, CLEAR THAT HE COULD HAVE MADE THIS VISUAL
17 OBSERVATION.

18 AND THAT JUST BRINGS ME TO THE SECOND POINT, WHICH
19 IS, THE BURDEN OF PRODUCTION HAS NOW SHIFTED TO THEM.

20 YOUR HONOR ENTERED A SHOW CAUSE ORDER FINDING THAT
21 WE HAD ESTABLISHED A PRIMA FACIE CASE. IF THEY BELIEVE OR IF
22 THEY ASSERT THAT THEY DID NOT DISTRIBUTE MARIJUANA ON MAY 27TH
23 OF THIS YEAR, THEN IT WAS THEIR OBLIGATION TO COME BACK WITH
24 EVIDENCE STATING THAT THEY DIDN'T DO IT. AND, OF COURSE, THEY
25 CAN'T DO THAT BECAUSE THIS FACTUAL ISSUE IS NOT BEFORE THE

1 COURT, AND THAT REALLY GOES TO THE POINT WITH RESPECT TO
2 THE -- THE SAME POINT HOLDS WITH RESPECT TO THE OAKLAND CLUB
3 AS WELL, YOUR HONOR.

4 IT SEEMS WHAT ABLE COUNSEL IS ARGUING IS THAT
5 BECAUSE WE DISTRIBUTED MARIJUANA TO SO MANY PEOPLE ON MAY
6 21ST, WE DON'T KNOW WHICH OF THE 14 PEOPLE THE GOVERNMENT IS
7 TALKING ABOUT.

8 WELL, IF THEY DISTRIBUTED MARIJUANA TO 191 PERSONS
9 ON MAY 21ST, THEN IT WAS THEIR OBLIGATION AFTER THE BURDEN OF
10 PRODUCTION HAS SHIFTED TO COME BACK WITH DECLARATIONS
11 ESTABLISHING THAT EACH OF THE 191 PERSONS MET THE ELEMENTS OF
12 THE NECESSITY DEFENSE, AND, OF COURSE, THEY HAVEN'T COME CLOSE
13 TO MAKING SUCH A SHOWING.

14 THE COURT: LET'S TALK ABOUT MARIN FOR A MOMENT.
15 THE DECLARATION OF THE AGENT SAYS THAT ON MAY 27TH, THE AGENT
16 OBSERVED 14 INDIVIDUALS ENTERED THE MARIN ALLIANCE, LOCATED AT
17 6 SCHOOL STREET PLAZA, IN FAIRFAX, CALIFORNIA, AND ATTACHED TO
18 IT IS THE AGENT'S REPORT, AND THAT ON THE SAME DAY, IT
19 INDICATES THE TIME, BUT IT INDICATES THAT SUITE 210, 6 SCHOOL
20 STREET PLAZA.

21 THEN MISS LANETTE SHAW, WHO IS THE DIRECTOR, SAYS
22 THAT MARIN ALLIANCE IS NOT LOCATED AT 210. IT'S LOCATED AT
23 215. AND BY THE WAY, THERE ARE EIGHT OR SO DIFFERENT TENANTS
24 AT THIS LOCATION, AND THAT THEY HAVE A RULE ABOUT SMOKING IN
25 THE AREA OF THE OFFICE, IN THE MEZZANINE, IN THE PARKING LOT.

1 AND THE AGENT SAYS, "I SAW SOME PEOPLE SMOKE CIGARETTES." I
2 MEAN, HE DOESN'T SAY, "I SAW PEOPLE SMOKE MARIJUANA
3 CIGARETTES." HE SAID, "I SAW THEM SMOKING CIGARETTES."

4 ARE YOU SAYING TO ME THAT'S CLEAR AND CONVINCING
5 EVIDENCE THAT THIS INJUNCTION WAS VIOLATED?

6 MR. QUINLIVAN: WELL, WHEN TAKEN IN VIEW OF THE
7 OTHER EVIDENCE THAT WE SUBMITTED.

8 THE COURT: THE OTHER EVIDENCE, BEING THAT THE CLUB
9 IS OPENED FOR BUSINESS, OKAY, AND THE BUSINESS IS DISTRIBUTING
10 MARIJUANA CIGARETTES. OKAY. OKAY, WE ASSUME THAT'S THE
11 BUSINESS. SO WHAT? THERE ARE EIGHT TENANTS.

12 NOW, IT MAY BE LOGICAL TO DRAW THE INFERENCE THAT IN
13 FACT THESE EIGHT PEOPLE OR 14 PEOPLE, WHATEVER IT WAS, WERE
14 SMOKING MARIJUANA, WHICH THEY RECEIVED FROM MARIN ALLIANCE;
15 BUT, YOU KNOW, IT'S ONE THING TO HAVE THE INFERENCES AND TO
16 DRAW THE INFERENCE -- THE TRIER OF FACT HAS TO DRAW THE
17 INFERENCE, AND THAT'S, YOU KNOW, WHEN YOU'RE LOOKING AT THAT
18 IN LIGHT OF THE COUNTER DECLARATION THAT HAS BEEN PRESENTED,
19 I'M HAVING A HARD TIME COMING TO THE CONCLUSION THAT THERE IS
20 A SHOWING BY CLEAR AND CONVINCING EVIDENCE THAT THIS
21 INJUNCTION AS TO MARIN WAS VIOLATED.

22 NOW, THAT MAY BE THE CASE, AND IT MAY BE THAT THE
23 TRIER OF FACT HAS TO HEAR THE EVIDENCE. IT'S A VERY DIFFERENT
24 ARGUMENT THAN THE MEDICAL NECESSITY ARGUMENT. THE MEDICAL
25 NECESSITY ARGUMENT IS ESPECIALLY CLEAR IN THE MARIN CASE THAT

1 THEY OFFERED VERY LITTLE EVIDENCE UNLESS THEY DO SO -- I MEAN,
2 I THINK THEY DO. THEY INCORPORATE BY REFERENCE TO A NUMBER OF
3 THINGS, BUT NOTHING HAS BEEN PRESENTED TO DEMONSTRATE IN THE
4 MARIN CASE ANY PARTICULARIZED ASSERTION OF THE PRIVILEGE.

5 OKAY. THAT'S A DEFENSE. YOU PUT THAT ASIDE, AND
6 YOU ASK THE SAME QUESTION THAT I ASKED, PERHAPS, UNFAIRLY OF
7 MR. BROSNAHAN, BUT I WOULD ASK OF YOU: ARE THERE STILL SOME
8 FACTUAL ISSUES OUT THERE?

9 AND IT SEEMS TO ME IN THE MARIN CASE, THERE MAY VERY
10 WELL BE, IN LIGHT OF MISS SHAW'S DECLARATION, DIFFERENT
11 LOCATION, SLIGHTLY DIFFERENT LOCATION WHICH, BY THE WAY, IN A
12 CRIMINAL CONTEST IS ALWAYS REALLY KEY AND ALSO IN TERMS OF AN
13 INJUNCTION IS KEY, THE ADDRESS, LOCATION. NOBODY -- THESE ARE
14 TRAINED AGENTS. I ASSUMED THAT HE COULD HAVE GONE IN AND
15 LOOKED TO SEE WHAT WAS GOING ON. THEY DIDN'T HAVE ANY PROBLEM
16 IN OAKLAND, BUT HE DOESN'T DO SO IN MARIN. AND WHAT HE DOES
17 SEE ARE SOME PEOPLE WHO ARE OUTSIDE AT A PARTICULAR TIME
18 SMOKING CIGARETTES, WHICH, IF YOU GO BY THE FEDERAL BUILDING,
19 HOPEFULLY, THERE ARE PEOPLE SMOKING CIGARETTES. BUT THE
20 ANSWER IS, YOU CAN'T SMOKE INSIDE THE BUILDING NOWADAYS. IN
21 MARIN, I THOUGHT IT WAS AGAINST THE LAW TO SMOKE ANYWHERE, BUT
22 IT IS A FACT THAT PEOPLE WILL BE OUTSIDE A WORK ESTABLISHMENT
23 SMOKING, SMOKING CIGARETTES.

24 HERE YOU HAVE EIGHT TENANTS, DIFFERENT TENANTS. SO
25 I DON'T KNOW. IT'S YOUR CHOICE, YOUR CHOICE IN THE SENSE OF

1 HOW YOU WANT TO PROCEED, BUT MY CHOICE, I GUESS, IN A SENSE,
2 IS WHETHER YOU HAVE MADE A SHOWING OR NOT.

3 MR. QUINLIVAN: LET ME JUST ADDRESS THAT, BRIEFLY,
4 YOUR HONOR, BECAUSE THERE ARE TWO POINTS.

5 FIRST OFF, THE EVIDENCE WILL ULTIMATELY SHOW THAT
6 THERE IS NO REAL DISPUTE ABOUT THE ADDRESS LOCATION. I MEAN,
7 THIS IS BEYOND THE RECORD, BUT IT'S MY UNDERSTANDING THAT THE
8 ADDRESS WAS SIMPLY CHANGED TO ROOM 215, IN CONSONANCE WITH THE
9 PROPOSITION; BUT, OF COURSE, THAT'S BEYOND THE RECORD SO I
10 WON'T ADDRESS THAT --

11 THE COURT: I WOULD ONLY --

12 MR. QUINLIVAN: I UNDERSTAND. I WON'T ADDRESS THAT
13 ANY FURTHER.

14 BUT LET ME SAY THIS: WHAT MISS SHAW SAYS IN HER
15 DECLARATION IS THAT WE DID NOT DISTRIBUTE MARIJUANA TO ANYONE
16 ON MAY 27TH OF THIS YEAR. WHAT SHE SAYS IS, "THERE ARE OTHER
17 TENANTS IN THE BUILDING, AND WE HAVE A POLICY AGAINST PERSONS
18 SMOKING OUTSIDE."

19 NOW, TAKE THAT IN LIGHT OF THE SUPREME COURT'S
20 DECISIONS STARTING FROM JUSTICE BRANDEIS' OPINION IN THE
21 BELLAKOMSKY (PHONETIC) CASE TO THE BAXTER CASE IN THE 1980'S,
22 WHERE THE SUPREME COURT HAS REPEATEDLY RECOGNIZED THE
23 PRINCIPLE THAT WHEN A PARTY IS CALLED UPON TO MAKE AN
24 ASSERTION UNDER A PARTICULAR SET OF CIRCUMSTANCES AND FAILS TO
25 DO SO, THAT CONSTITUTES EVIDENCE OF ACQUIESCENCE; AND,

1 CERTAINLY, IN VIEW OF YOUR HONOR'S SHOW CAUSE ORDER, WHICH
2 REQUIRED THEM TO PROVIDE DETAILED DECLARATIONS, EITHER
3 CONTESTING THE FACT THAT THEY ENGAGED IN THE CONDUCT THAT WAS
4 ALLEGED OR ESTABLISHING THEIR AFFIRMATIVE DEFENDANTS. AND WE
5 HAVE NOTHING TO THE EFFECT THAT THE MARIN ALLIANCE DID NOT
6 DISTRIBUTE MARIJUANA ON THAT DATE.

7 UNDER THESE WELL-ESTABLISHED AUTHORITIES, YOUR
8 HONOR, THAT CONSTITUTES EVIDENCE OF ACQUIESCENCE, AND I THINK,
9 I POINTED YOUR HONOR TO A RECENT DECISION WHICH HAS APPLIED
10 THIS PRINCIPLE, WHICH IS THE WATSON CASE FROM THE --

11 THE COURT: HOW DO I DRAW THE DISTINCTION BETWEEN A
12 PREPONDERANCE OF THE EVIDENCE AND A CLEAR AND CONVINCING
13 EVIDENCE? LET'S ASSUME, YES, THAT'S EVIDENCE. IS IT CLEAR
14 AND CONVINCING?

15 MR. QUINLIVAN: I THINK WHEN WE'VE ADDRESSED --

16 THE COURT: LET ME ASK YOU THIS, MR. QUINLIVAN:
17 LET'S REALLY GET DOWN TO PRACTICALITY.

18 A PERSON GOES INTO A BUILDING. IT HAS ONE BUSINESS
19 THAT'S ILLEGAL AND FIVE BUSINESSES THAT ARE LEGAL, AND, FIRST,
20 THE MARIJUANA, THAT'S THE ILLEGAL BUSINESS. SOMEBODY COMES
21 OUT. IS THAT A CLEAR AND CONVINCING EVIDENCE THAT THAT WAS A
22 MARIJUANA CIGARETTE COMING FROM THAT OCCASION?

23 LET'S ASSUME EVEN BY -- LET'S ASSUME THAT THE
24 BUSINESS IN THERE, YES, IT IS A BUSINESS DISTRIBUTING
25 MARIJUANA CIGARETTES. NOW, THAT'S IT. THEY DISTRIBUTE

1 MARIJUANA AND SOMEBODY IS OUTSIDE SMOKING A CIGARETTE, AND I
2 HAVE TO INFER BY CLEAR AND CONVINCING EVIDENCE THAT THAT
3 PERSON, THAT PERSON, GOT THE MARIJUANA CIGARETTE FROM THAT
4 LOCATION. MAYBE, IT'S LOGICAL AND MAYBE IT HAPPENED, AND
5 MAYBE IT'S LOGICAL, BUT IS THAT -- HAS THAT MET THE STANDARD
6 OF CLEAR AND CONVINCING?

7 MR. QUINLIVAN: WELL, LET ME PUT THE ENTIRE CONTEXT,
8 TOGETHER, BECAUSE WHAT IT WILL BE, YOUR HONOR, IS A CLUB WHICH
9 MAINTAINS A WORLDWIDE WEBSITE, WHICH ADVERTISES THE FACT THAT
10 THEY DISTRIBUTE MARIJUANA, WHERE THE DIRECTOR OF THE CLUB HAS
11 GIVEN INTERVIEWS TO THE PRESS, ASSERTING THE FACT THAT THEY
12 ARE CONTINUING TO DISTRIBUTE MARIJUANA UNDER THE NECESSITY
13 DEFENSE, WHERE AGENTS HAVE CALLED THE CLUB, AND THE CLUB HAS
14 SAID, "YES, WE ARE CONTINUING TO OPERATE UNDER THE NECESSITY
15 DEFENSE, AND THEN WHERE THE AGENT SEES 14 INDIVIDUALS OVER
16 TWO-AND-A-HALF-HOUR PERIOD GO INTO A PARTICULAR LOCATION AND
17 COME OUT, SOME OF WHOM ARE SMOKING CIGARETTES. AND THEN IN
18 RESPONSE TO A SHOW --

19 THE COURT: WHAT DO I INFER FROM THE PEOPLE WHO
20 AREN'T SMOKING? DO I INFER FROM THAT THAT THOSE PEOPLE DIDN'T
21 GET CIGARETTES OR CHOSE NOT TO SMOKE THEM OUTSIDE, AND WHAT IS
22 THE STANDARD I USE FOR THAT INFERENCE?

23 THE PROBLEM IS, AND I'M NOT FAULTING YOU FOR THE
24 EVIDENCE. THE EVIDENCE IS THE EVIDENCE. IT'S JUST LEAVES ME
25 A LITTLE UNPERSUADED.

1 MR. QUINLIVAN: I UNDERSTAND, YOUR HONOR, AND I
2 GUESS I WOULD JUST LEAVE YOUR HONOR WITH THIS, WHICH IS, IT
3 MIGHT BE ONE THING IF WE WERE JUST TALKING ABOUT THE EVIDENCE
4 THAT WAS SUBMITTED BY THE GOVERNMENT.

5 EVEN CONCEDED THAT, EVEN FOR PURPOSES OF THIS
6 ARGUMENT TODAY, IF I WERE TO CONCEDE THAT, YOUR HONOR IS
7 CONCERNED ABOUT THE STATUS OF THAT EVIDENCE.

8 THE BURDEN OF PRODUCTION SHIFTED TO THE DEFENDANT
9 WHEN YOUR HONOR ISSUED THE SHOW CAUSE ORDER, AND AGAIN THEIR
10 FAILURE TO SPECIFICALLY CONTEST THE FACT THAT THEY WERE
11 DISTRIBUTING MARIJUANA CONSTITUTES EVIDENCE OF ACQUIESCENCE.
12 WHEN THAT IS TAKEN IN CONJUNCTION WITH THE TOTALITY OF THE
13 CIRCUMSTANCES SURROUNDING OUR EVIDENCE, I THINK IT'S QUITE
14 CLEAR THAT THE CLEAR AND CONVINCING STANDARD HAS BEEN MET.

15 THE COURT: OKAY. THANK YOU.

16 MR. PANZER: MAY I BRIEFLY ADDRESS THE COURT ON
17 BEHALF OF THE MARIN ALLIANCE, THE DEFENDANTS WHO HAVE NOT BEEN
18 HEARD?

19 THE COURT: I WAS GOING TO TAKE A RECESS AT 4
20 O'CLOCK ABOUT SEVEN MINUTES, AND THEN WE'LL WRAP IT UP.

21 OKAY. WE'RE IN RECESS.

22 (RECESS).

23 THE COURT: BEFORE YOU START, MR. PANZER, THERE IS A
24 MOTION FROM THE CALIFORNIA MEDICAL ASSOCIATION FOR LEAVE TO
25 FILE A BRIEF AMICUS, AND THAT'S GRANTED, WILL BE CONSIDERED AT

1 THE TIME, AS I INTEND TO TAKE THE MATTER UNDER SUBMISSION. I
2 WILL REVIEW THE BRIEF AT THAT TIME, AND IF I HAVE ANY
3 QUESTIONS ABOUT IT, THEN I'LL ASK IT.

4 OKAY. MR. PANZER, YOU WANTED TO SPEAK ON BEHALF OF
5 MARIN?

6 MR. PANZER: THANK YOU, YOUR HONOR.

7 YOUR HONOR, FIRST OF ALL, I WANT TO ADDRESS A
8 COMMENT THE COURT MADE AT THE BEGINNING OF THIS CASE WHEN THE
9 COURT SAID THAT IT PRESUMED THAT THE DEFENDANTS KNOW WHO THE
10 ALLEGED PEOPLE ARE OR THE PEOPLE WHEN THE ALLEGED
11 DISTRIBUTIONS TOOK PLACE.

12 I WOULD REPRESENT TO THE COURT THAT, AS FAR AS MY
13 CLIENT, MARIN, IS CONCERNED, TO WHAT EXTENT THESE 14 PEOPLE
14 MAY HAVE BEEN IN THE MARIN ALLIANCE FOR MARIJUANA ON THAT DAY,
15 WHAT BUSINESS THEY HAD THERE, THAT WE HAVE NO RECORDS. THAT
16 THIS EVENT OCCURRED ON THE 27TH WHEN THE AGENT WAS OUT THERE,
17 OCCURRED A COUPLE OF DAYS AFTER AN AGENT PERSONALLY DELIVERED
18 A COPY OF YOUR HONOR'S ORIGINAL PRELIMINARY INJUNCTION TO THE
19 MARIN ALLIANCE.

20 THIS WAS SEVERAL DAYS AFTER IT WAS MAILED TO MY
21 OFFICE. APPARENTLY AGENT WENT OUT AND PERSONALLY DELIVERED IT
22 TO MISS SHAW AT THE MARIN ALLIANCE. AT THAT TIME I WAS OUT OF
23 TOWN IN COLORADO, TEACHING A CONTINUING LEGAL SEMINAR ON
24 MEDICAL MARIJUANA, ACTUALLY.

25 MISS SHAW, UNABLE TO GET IN TOUCH WITH ME,

1 INTERPRETED THAT THERE MAY BE A RAID EMINENT AND SO TOOK THE
2 COMPUTERS OUT OF THE OFFICE TO PROTECT THE IDENTITIES OF ANY
3 PATIENTS.

4 SO AT THAT TIME FOR SEVERAL DAYS, MAY 27TH BEING ONE
5 OF THOSE DAYS, THERE WERE NO COMPUTERS IN THE MARIN ALLIANCE,
6 WHICH WOULD HAVE KEPT ANY RECORDS SHOWING WHO WAS IN AND OUT
7 ON THESE PARTICULAR DAYS.

8 NOW, WITH THE COURT'S PERMISSION, I WOULD LIKE TO
9 ADDRESS A VERY NARROW AREA OF SUBSTANTIVE DUE PROCESS, WHICH
10 HAS NOT PREVIOUSLY BEEN ADDRESSED BEFORE THIS COURT, AND WHICH
11 IS IN RESPONSE TO AN ISSUE BROUGHT UP FOR THE FIRST TIME BY
12 THE GOVERNMENT IN THEIR REPLY BRIEF TO OUR OPPOSITION TO THE
13 MOTION IN LIMINE, AND THAT HAS TO DO WITH THE QUESTION OF
14 RATIONAL BASIS.

15 THE GOVERNMENT REFERS TO THE HELLER CASE, AND CITES
16 IT FOR THE PROPOSITION THAT THIS COURT HAS TO GIVE GREAT
17 DEFERENCE TO CONGRESS. THAT CONGRESS HAD A RATIONAL BASIS FOR
18 PLACING MARIJUANA IN SCHEDULE I, AND THE EVIDENCE THE
19 GOVERNMENT ESSENTIALLY OFFERS IS BECAUSE THEY DID IT; THAT
20 BECAUSE CONGRESS VOTED TO PUT IT IN SCHEDULE I, THAT IS
21 EVIDENCE THAT THEY HAD A RATIONAL BASIS, AND THAT'S THE END OF
22 THE INQUIRY.

23 WELL, THE HELLER CASE DOESN'T SAY THAT. I THINK,
24 FIRST OF ALL, IT'S IMPORTANT TO REALIZE THAT THE HELLER CASE
25 SPECIFICALLY DEALS WITH GOVERNMENT ACTION THAT IN WHICH

1 SUSPECT CLASS AND THE FUNDAMENTAL RIGHTS ARE NOT AT ISSUE.

2 HERE, IN SUBSTANTIVE DUE PROCESS, THE TRADITIONALLY
3 RECOGNIZED RIGHTS TO BE FREE FROM PAIN, TO RECEIVE MEDICAL
4 TREATMENT, THESE DO REPRESENT FUNDAMENTAL RIGHTS. SO I DON'T
5 THINK THE HELLER CASE WOULD REALLY APPLY.

6 BUT EVEN SO, EVEN IF THE HELLER CASE DID APPLY, THE
7 HELLER CASE DOES NOT STAND FOR THE PROPOSITION THAT IF
8 CONGRESS VOTES IT, THAT IS A RATIONAL BASIS. END OF STORY.
9 IT HAS TO DO WITH WHERE THE BURDEN LIES IN PROVING IT, AND
10 WHAT THE HELLER CASE ACTUALLY SAYS IS THAT IF IT IS AN ISSUE
11 THAT DOES NOT ADDRESS A FUNDAMENTAL RIGHT OR A SUSPECT CLASS,
12 THAT THERE IS A PRESUMPTION THAT WHEN THE LEGISLATURE VOTES A
13 STATUTE, THEY HAVE A RATIONAL BASIS, BUT THAT'S A REBUTTABLE
14 PRESUMPTION. AND THE PERSON CHALLENGING THAT OR THE GROUP
15 CHALLENGING THAT DECISION HAS A RIGHT TO COME IN AND HAS THE
16 BURDEN OF PROVING THAT THERE IS ANY POSSIBLE RATIONAL BASIS
17 BEHIND THE ACTION TAKEN BY THE LEGISLATURE.

18 AND THAT INTERPRETATION HAS BEEN AGREED UPON IN THIS
19 CIRCUIT IN TWO CASES, HOLMES V. CALIFORNIA ARMY NATIONAL
20 GUARD, WHICH CAN BE FOUND AT 124 F.3D 1126 -- IT'S A 1997
21 CASE -- AND ALSO IN PHILLIPS VERSUS PERRY, WHICH CAN BE FOUND
22 AT 106 F.3D 1420, ALSO A 1997 CASE. AND BOTH THESE CASES TALK
23 ABOUT THE HELLER RULE, AND HOW IT PUTS THE BURDEN ON THE
24 PERSON CHALLENGING BUT ALLOWS THEM TO CHALLENGE IT.

25 NOW, IN THIS CASE I DON'T THINK THE BURDEN IS ON THE

1 DEFENDANTS, BECAUSE THIS DOES INVOLVE A FUNDAMENTAL RIGHT. I
2 THINK THE BURDEN IS ON THE GOVERNMENT. THE GOVERNMENT HAS NOT
3 PUT IN ONE IOTA OF EVIDENCE THAT THERE IS A RATIONAL BASIS FOR
4 THIS.

5 NOW, IF MY CLIENT VIOLATED AN INJUNCTION, THE
6 GOVERNMENT WOULD HAVE TO PROVE TWO THINGS, NOT JUST THAT MY
7 CLIENT DISTRIBUTED MARIJUANA, BUT THAT THAT DISTRIBUTION WAS
8 IN VIOLATION OF THE CONTROLLED SUBSTANCES ACT.

9 IF THE CONTROLLED SUBSTANCES ACT, ITSELF, IS
10 UNCONSTITUTIONAL AS APPLIED TO MY CLIENT'S ACTIONS, THEN MY
11 CLIENT IS NOT IN VIOLATION OF THE CONTROLLED SUBSTANCES ACT
12 AND, THEREFORE, NOT IN VIOLATION OF THE COURT'S PRELIMINARY
13 INJUNCTION.

14 NOW, THE WAY THAT THE GOVERNMENT HAS RESTRICTED
15 MEDICAL USE OF MARIJUANA IS BY PLACING IT IN SCHEDULE I.
16 SCHEDULE I HAS THREE REQUIREMENTS. ALL THREE HAVE TO BE MET
17 FOR THE DRUG TO BE IN SCHEDULE I.

18 FIRST, THAT THE DRUG OR OTHER SUBSTANCE HAS A HIGH
19 POTENTIAL FOR ABUSE.

20 SECONDLY, THAT THE DRUG OR OTHER SUBSTANCE HAS NO
21 CURRENTLY ACCEPTED MEDICAL USE IN TREATMENT IN THE UNITED
22 STATES; AND

23 THIRD, IF THERE IS A LACK OF ACCEPTED SAFETY FOR USE
24 OF THE DRUG OR OTHER SUBSTANCE UNDER MEDICAL SUPERVISION.

25 YOUR HONOR, I THINK -- AS I SAID, I BELIEVE THAT THE

1 BURDEN IS ON THE GOVERNMENT TO COME FORWARD WITH EVIDENCE OF A
2 RATIONAL BASIS TO BELIEVE THAT MARIJUANA BELONGS IN SCHEDULE
3 I. HOWEVER, I THINK THAT THE DEFENDANTS HAVE ALREADY MADE A
4 PROFFER TO THIS COURT BY WHICH THIS COURT COULD FIND THAT WE
5 SHOULD GO AHEAD AND BE ALLOWED TO PROVE THAT THERE IS NO
6 RATIONAL BASIS.

7 THE SECOND PRONG OF THE TEST IS THAT THE DRUG OR
8 OTHER SUBSTANCE HAS NO CURRENTLY ACCEPTED MEDICAL USE OR
9 TREATMENT IN THE UNITED STATES. YET, THE COURT HAS BEFORE IT
10 IN THIS CASE NUMEROUS DECLARATIONS FROM DOCTORS AND PATIENTS
11 ALL ATTESTING TO ACCEPTED MEDICAL USE.

12 IN FACT, YOUR HONOR, IN THE FOURTH ANNUAL REPORT TO
13 THE U.S. CONGRESS, IN 1974, THE NATIONAL INSTITUTE OF DRUG
14 ABUSE TALKED ABOUT ACCEPTED USES OF MARIJUANA AS AN ANALGESIC,
15 FOR ANTICONVULSIVE EFFECTS IN EPILEPSY, AS A BRONCHIAL
16 DILATOR, TO RELIEF THE INTEROCULAR EYE PRESSURE ASSOCIATED
17 WITH GLAUCOMA.

18 JANUARY 1ST, OF 1990, DR. JEROME CASIER (PHONETIC)
19 EDITOR OF THE NEW ENGLAND JOURNAL OF MEDICINE, STATED IN AN
20 EDITORIAL THAT A FEDERAL POLICY THAT PROHIBITED PHYSICIANS
21 FROM ALLEVIATING SUFFERING BY PRESCRIBING MARIJUANA TO
22 SERIOUSLY-ILL PATIENTS IS MISGUIDED, HEAVY-HANDED AND
23 INHUMANE.

24 NUMEROUS MEDICAL ORGANIZATIONS THROUGHOUT THIS
25 COUNTRY HAVE CALLED UPON THE GOVERNMENT TO RESCHEDULE

1 MARIJUANA, AND JUST A FEW OF THESE, YOUR HONOR:

2 THE AMERICAN ACADEMY OF FAMILY PHYSICIANS IN 1995;
3 THE AMERICAN MEDICAL STUDENTS' ASSOCIATION, IN 1994, THE
4 AMERICAN PREVENTATIVE MEDICAL ASSOCIATION IN 1997, THE
5 AMERICAN PUBLIC HEALTH ASSOCIATION IN 1994, THE AMERICAN
6 SOCIETY FOR ADDICTIVE MEDICINE; ALSO, OTHER ORGANIZATIONS,
7 SUCH AS THE AUSTRALIAN NATIONAL TASK FORCE ON CANNABIS, THE
8 FRENCH MINISTRY OF HEALTH, HEALTH CANADA; ORGANIZATIONS SUCH
9 AS KAISER PERMANENTE, THE GLAUCOMA FOUNDATION OF AMERICA, THE
10 NEW ENGLAND JOURNAL OF MEDICINE; VARIOUS OTHERS, A LOT OF
11 ORGANIZATIONS, YOUR HONOR.

12 I THINK THAT WE HAVE PRESENTED EVIDENCE THAT THERE
13 IS ACCEPTED MEDICAL USE FOR MARIJUANA WITHIN THE MEDICAL
14 COMMUNITY, AND THAT'S NOT DECIDED BY A SENATOR TRYING TO GET
15 VOTES IN HIS HOME STATE. IT'S DECIDED BY A DOCTOR LOOKING AT
16 SCIENCE.

17 THE COURT: WHO MAKES THE JUDGMENT THOUGH? IS IT A
18 JUDGMENT THAT SHOULD BE MADE BY THE DISTRICT COURT, OR IS IT A
19 JUDGMENT THAT SHOULD BE MADE BY THE FDA, THE SECRETARY OF
20 HUMAN SERVICES? WHO MAKES THE JUDGMENT? IS IT FOR ME TO
21 MAKE? IS THE JUDGMENT IN EVERY CASE WHETHER, YOU KNOW, A DRUG
22 COMES IN, WHICH IS A SCHEDULE I DRUG, AND THE DISTRICT COURT
23 SHOULD TAKE A LOOK AT IT AND SEE WHETHER OR NOT IT SHOULD
24 MAKES SENSE TO HAVE IT A SCHEDULE I DRUG?

25 IS THE ARGUMENT THAT YOU ARE MAKING THAT THE COURT

1 SHOULD SCHEDULE DRUGS?

2 MR. PANZER: NO, YOUR HONOR, AND I UNDERSTAND, YOUR
3 HONOR'S CONCERN, AND I THINK IN THE GREAT MAJORITY OF CASES, I
4 WOULD AGREE WITH YOUR HONOR THAT THIS KIND OF QUESTION HAS NO
5 BUSINESS BEING IN THIS BUILDING.

6 HOWEVER, WHEN WE HAVE A RECORD WHERE EVERYBODY ALONG
7 THE LINE, FROM CONGRESS, TO THE ATTORNEY GENERAL'S OFFICE, THE
8 D. E. A., TO HEALTH AND HUMAN SERVICES, THAT EVERYBODY ALONG
9 THE LINE HAS ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER, HAS
10 REFUSED TO LOOK AT THE OBVIOUS SCIENTIFIC EVIDENCE, HAS ACTED
11 TO PERPETUATE A PROPAGANDA FOR POLITICAL PURPOSES, A
12 PROHIBITION THAT IS SO WIDE-SPREAD --

13 THE COURT: IS THE ARGUMENT THAT YOU RAISED EXACTLY
14 THE SAME ARGUMENT THAT WAS RAISED IN THE CASE IN WASHINGTON D.
15 C. ATTACKING -- I FORGET THE NAME.

16 MR. PANZER: TERAPEWS (PHONETIC), YOUR HONOR, I
17 BELIEVE.

18 THE COURT: YES. EXACTLY THE SAME ARGUMENT WAS MADE
19 AND THE COURT OF APPEALS SAID, "TOO BAD".

20 MR. PANZER: WELL, YOUR HONOR, ACTUALLY THAT'S NOT
21 QUITE THE ARGUMENT THAT WAS MADE IN TERAPEWS (PHONETIC). THAT
22 CASE STEMS FROM THE DECISION IN 1988 BY JUDGE FRANCIS YOUNG, A
23 D. E. A. ADMINISTRATIVE LAW JUDGE, WHO CAME DOWN AND BASICALLY
24 SAID THAT THE SCHEDULING OF MARIJUANA IN SCHEDULE I WAS
25 UNREASONABLE, ARBITRARY AND CAPRICIOUS; THAT MARIJUANA IS ONE

1 OF THE SAFEST SUBSTANCES KNOWN TO MANKIND. THAT'S AFTER HE
2 HEARD EVIDENCE INCLUDING THE FACT THAT THERE IS NO TOXIC DOSE
3 OF MARIJUANA.

4 THE COURT: SO HE CONCLUDED THAT WAY?

5 MR. PANZER: HE CONCLUDED THAT, AND THE ISSUE WAS
6 WHETHER OR NOT THIS WAS CONTROLLING ON D. E. A. AS AN ADVISORY
7 OPINION.

8 THE COURT: AND THE ANSWER WAS IT WAS NOT
9 CONTROLLING.

10 MR. PANZER: THAT'S CORRECT, YOUR HONOR, IN THAT
11 CASE. SINCE THEN, THERE HAVE BEEN MORE STUDIES DONE.

12 FURTHERMORE, YOUR HONOR, THE THIRD PRONG --

13 THE COURT: BUT IS THERE A CASE YOU CAN POINT ME TO
14 THAT SAYS, LOOK, THE DISTRICT COURT CAN COME ALONG AND UNDER
15 THESE CIRCUMSTANCES CAN BASICALLY OVERRULE WHAT THE DECISION
16 IS OF THE ADMINISTRATOR ON SCHEDULE I DRUGS? CAN YOU POINT ME
17 TO SOME CASE THAT SAYS, LOOK, ON SCHEDULE I DRUGS,
18 NOTWITHSTANDING WHATEVER THE INDIVIDUALS WHO ARE AUTHORIZED TO
19 EXAMINE THESE DRUGS AND REPORT ON THESE DRUGS, NOTWITHSTANDING
20 WHATEVER THEIR OPINION IS, IF WE COME IN WITH SOME EVIDENCE
21 THAT SHOWS THAT THEIR OPINION IS REALLY NOT APPROPRIATE, YOU
22 CAN CHANGE IT?

23 MR. PANZER: YES, YOUR HONOR. I WOULD POINT THE
24 COURT TO CONANT, THE CASE THAT IS RELIED ON BY THE GOVERNMENT,
25 THE LAETRILE CASE, IN WHICH THE COURT SAYS THAT BECAUSE THE

1 MANUFACTURER HAD NOT SHOWN THAT THE GOVERNMENT WAS ACTING
2 COMPLETELY AND CLEARLY ARBITRARILY AND CAPRICIOUSLY, THE COURT
3 WOULD NOT DISTURB THE GOVERNMENT'S FINDINGS REGARDING
4 LAETRILE.

5 THE COURT: SO IT'S EVIDENCE I HAVE TO TAKE THE
6 OPPOSITE OF, WHICH IS THAT, SINCE IT'S YOUR ARGUMENT THAT THE
7 GOVERNMENT IS ACTING ARBITRARILY AND CAPRICIOUSLY, THEREFORE,
8 THAT'S AUTHORITY FOR THE PROPOSITION THAT I SET IT ASIDE?

9 MR. PANZER: CERTAINLY, YOUR HONOR, I DON'T SEE WHY
10 THE CONANT COURT AND SEVERAL OTHER COURTS, WHICH WERE CITED IN
11 OUR PAPERS, WHY THEY WOULD EVEN BOTHER TO MENTION, BY THE WAY
12 THESE PEOPLE DID NOT PROVE THAT THEY DIDN'T HAVE A RATIONAL
13 BASIS, IF RATIONAL BASIS WAS NOT A DEFENSE.

14 THE COURT: I'LL LOOK AT THAT AGAIN.

15 MR. PANZER: AND IN THIS CASE, YOUR HONOR, AGAIN I
16 DON'T BELIEVE THAT THE BURDEN WOULD BE ON US UNDER THE HELLER
17 CASE, BUT WE ARE WILLING TO ACCEPT THAT BURDEN, BECAUSE WE
18 KNOW WHAT THE EVIDENCE IS.

19 WE KNOW WHAT THE EVIDENCE WILL SHOW THAT THERE IS NO
20 RATIONAL BASIS FOR ANY AGENCY, BE IT CONGRESS, BE IT D. E. A.,
21 BE IT HEALTH AND HUMAN SERVICES, THERE IS NO BASIS FOR FINDING
22 THAT MARIJUANA HAS NO ACCEPTED MEDICAL VALUE AND THAT THERE IS
23 NO SAFE WAY FOR ITS DISTRIBUTION.

24 THIS IS A SYSTEM THAT HAS FOUND A SAFE WAY TO
25 DISTRIBUTE COCAINE TO PATIENTS, A SAFE WAY TO DISTRIBUTE

1 MORPHINES. A FEW MONTHS AGO THEY FOUND A SAFE WAY TO
2 DISTRIBUTE THALIDOMIDE.

3 THE COURT: WELL, THEY SAY THEY HAVE FOUND A SAFE
4 WAY TO DISTRIBUTE MARIJUANA, AND THAT'S MARINOL AS A
5 PRESCRIPTION DRUG. I MEAN, THAT'S THEIR ARGUMENT. I'M NOT
6 SAYING -- YOU'RE NOT SAYING THAT THEY HAVEN'T -- YOU'RE NOT
7 SAYING THAT THERE'S NO WAY THAT THE ACTIVE INGREDIENT IN
8 MARIJUANA CAN BE DISTRIBUTED LEGALLY?

9 MR. PANZER: WELL, THE GOVERNMENT HAS YET TO RAISE
10 MARINOL IN THIS CASE. CERTAINLY, WE WOULD BE ABLE TO PUT ON
11 EVIDENCE --

12 THE COURT: WELL, WHETHER THEY HAVE OR NOT, I MEAN,
13 I'M JUST TRYING TO UNDERSTAND YOUR ARGUMENT.

14 MR. PANZER: I THINK, ACTUALLY, THAT CUTS AGAINST IT
15 FOR THE FACT THAT THE GOVERNMENT ALLOWS MARINOL TO BE SCHEDULE
16 II AND ALLOWS IT TO BE DISTRIBUTED, AND MARINOL IS ADMITTED
17 THC DELTA NINE, WHICH IS THE CYCLE ACTIVE INGREDIENT IN
18 MARIJUANA. TO THEN TURN AROUND AND SAY THERE IS ABSOLUTELY NO
19 WAY THAT MARIJUANA CAN BE SAFELY DISTRIBUTED UNDER MEDICAL
20 SUPERVISION, WHICH IS A REQUIREMENT TO BEING SCHEDULE I, THEY
21 ARGUE THEIR OWN POSITION. HOW CAN THEY ARGUE ON THE ONE HAND
22 THAT THERE IS NO WAY TO DISTRIBUTE THIS THAT CAN BE SAFELY
23 DONE UNDER MEDICAL SUPERVISION; BY THE WAY, THERE IS MARINOL?

24 THE FACT THAT THERE IS MARINOL SHOWS YOU THAT IT CAN
25 BE SAFELY DISTRIBUTED UNDER MEDICAL SUPERVISION.

1 AND I AGREE IT IS A TOUGH BURDEN FOR THE DEFENDANTS
2 TO MEET. IT'S A VERY EASY STANDARD TO MEET, VERY MINIMAL
3 STANDARD FOR THE GOVERNMENT TO SHOW A RATIONAL BASIS, BUT THE
4 PROFFER WE'RE MAKING TO THIS COURT IS THAT THEY CAN'T DO IT,
5 BECAUSE THERE IS NO RATIONAL BASIS.

6 THAT WE CAN SHOW, IF THE COURT WANTS TO GET INTO IT,
7 WE CAN SHOW THAT D. E. A. IN DEALING WITH PETITIONS DOES NOT
8 DEAL WITH PETITIONS AS THEY ARE REQUIRED TO DO UNDER THE CODE
9 OF FEDERAL REGULATIONS; THAT THERE'S A POLITICAL AGENDA HERE
10 THAT PREVENTS THEM FROM LOOKING AT THE FACTS, FROM MAKING
11 OBJECTIVE, REASONABLE DECISIONS.

12 D. E. A. AND THE GOVERNMENT LONG AGO DECIDED WHAT
13 IT'S GOING TO DO ABOUT MARIJUANA. NOW, WHEN PEOPLE COME IN
14 WITH PETITIONS, WHEN THE NEW EVIDENCE COMES, THEY JUST FIND
15 EXCUSES TO TURN AWAY, SUCH AS THE PETITION THAT THE COURT
16 REFERRED TO WHEN WE WERE FIRST BEFORE YOUR HONOR BACK IN
17 MARCH, THE JOHN GETMAN'S PETITION, WHICH HAS BEEN PENDING
18 SINCE 1995, WHICH HE RECENTLY CHECKED WITH D. E. A. AND SAID,
19 "WHAT IS GOING ON?"

20 HE WAS TOLD, "OH, WE CAN'T LOOK AT YOUR PETITION
21 BECAUSE WE ARE TOO BUSY LOOKING AT PROPOSITION 215."

22 THEY WILL FIND ANY EXCUSE, AND I WOULD SUSPECT THAT
23 IF THIS COURT WERE TO ALLOW US TO PROCEED ON THIS ISSUE, ON
24 THE RATIONAL BASIS ISSUE, THE GOVERNMENT IS GOING TO FIND SOME
25 REASON TO AVOID --

1 THE COURT: WELL, YOU CAN FORCE THAT ISSUE, CAN'T
2 YOU, UNDER THE ADMINISTRATIVE PROCEDURE ACT? IF IN FACT THERE
3 IS UNDUE DELAY, AND THERE MAY VERY WELL BE IN THIS CASE UNDUE
4 DELAY, DON'T YOU HAVE THE REMEDY OF SEEKING RELIEF UNDER THE
5 ADMINISTRATIVE PROCEDURE ACT?

6 MR. PANZER: WELL, MR. GETMAN DOES, AND IF THIS WAS
7 UNDER THE NECESSITY ARGUMENT, I THINK YOUR HONOR WOULD BE
8 CORRECT THAT MIGHT BE AN ALTERNATIVE, LEGAL AVENUE TO PURSUE;
9 BUT WHEN IT COMES TO RATIONAL BASIS, THERE IS NO REQUIREMENT
10 YOU HAVE TO SHOW THAT EVEN THOUGH THEY HAVE NO RATIONAL BASIS
11 IF WE HAVE AN ALTERNATIVE METHOD, THAT'S OKAY.

12 THEY CAN'T SHOW A RATIONAL BASIS, BECAUSE THERE
13 ISN'T ONE. MY CLIENT DESIRES THE OPPORTUNITY TO PRESENT THAT,
14 TO PRESENT IT TO A JURY, AND I THINK, AS THE HELLER CASE
15 POINTS OUT, WE HAVE THE RIGHT TO DO THAT. NOW, WE MAY HAVE
16 THE BURDEN. I'M NOT ADMITTING THAT WE DO, BUT IF COURT SHOULD
17 FIND THAT, WE DON'T SHY AWAY FROM THAT BURDEN.

18 ONE OTHER THING I WOULD LIKE TO ADDRESS, YOUR HONOR.
19 THE COURT HAS MADE SEVERAL COMMENTS ABOUT THE EVIDENCE AGAINST
20 MARIN, AND I WOULD JUST STATE TO THE COURT THAT WHEN THE COURT
21 GRANTED THE OSC'S AGAINST OAKLAND AND MARIN AND DENIED IT
22 AGAINST UKIAH, THAT IT WAS HARD FOR ME TO SEE BETWEEN UKIAH
23 AND MY CLIENT'S POSITION. I THINK THE COURT HAS VERY
24 CORRECTLY FOUND THAT THERE ARE SOME SERIOUS QUESTIONS.

25 ALSO, SO THAT THERE IS NO MISUNDERSTANDING OR NO

1 MISREPRESENTATIONS UNINTENTIONALLY, MR. QUINLIVAN IS CORRECT.
2 MY UNDERSTANDING IS THAT MY CLIENT'S SUITE NUMBER ORIGINALLY
3 WAS SUITE 210. THAT WAS CHANGED TO SUITE 215, BUT THAT WAS
4 PRIOR TO THE TIME THE AGENT WAS THERE. SO IF THE AGENT SAYS
5 THAT HE WAS AT SUITE 210, I DON'T KNOW WHERE HE WAS. MY
6 CLIENT'S SUITE IS 215.

7 I THANK YOU, YOUR HONOR.

8 THE COURT: OKAY. I'M GOING TO TAKE THE MATTER
9 UNDER SUBMISSION. I'M GOING TO ISSUE A WRITTEN ORDER. IT
10 WILL COVER ALL THE MOTIONS IN LIMINE AND DISCUSS WHATEVER
11 PROCEDURES ARE APPROPRIATE.

12 THANK YOU VERY MUCH. I APPRECIATE YOUR ARGUMENT.

13 MR. UELMAN: YOUR HONOR, WE DO HAVE ONE PROFFER. I
14 KNOW YOU DID NOT WANT HEAR ARGUMENT ON THE JOINT USER DEFENSE.

15 WE HAVE A PROPOSED JURY INSTRUCTION THAT THERE HAS
16 BEEN NO PROFFER TO THE OTHER SIDE, BUT WE WOULD LIKE YOUR
17 HONOR TO CONSIDER IT.

18 THE COURT: ABSOLUTELY, I'LL BE GLAD TO.

19 MR. BROSNAHAN: YOUR HONOR, WE HAVE ONE REQUEST.
20 THAT THE ONE SENTENCE OF THE PROSPECTIVE ORDER BE CHANGED, AND
21 WHAT I WOULD LIKE TO DO IS HAVE PERMISSION TO SEND TO YOUR
22 HONOR FIRST THING IN THE MORNING THAT SENTENCE IN WRITING WITH
23 A COPY TO THE GOVERNMENT.

24 THE COURT: NO PROBLEM.

25 MR. BROSNAHAN: IT'S A PRACTICAL ADDITION.

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THE COURT: THANK YOU VERY MUCH.
(THE MATTER WAS CONCLUDED).

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CERTIFICATE OF REPORTER

I, ROSITA FLORES, OFFICIAL UNDERSIGNED COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 450 GOLDEN GATE AVENUE, SAN FRANCISCO, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT CONSTITUTES A TRUE, FULL AND CORRECT TRANSCRIPTION OF MY SHORTHAND NOTES TAKEN AS SUCH OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE ENTITLED, AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABILITY.

Rosita Flores

ROSITA FLORES

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11 Attorneys for Defendants
OAKLAND CANNABIS BUYERS'
12 COOPERATIVE and JEFFREY JONES

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

OAKLAND CANNABIS BUYERS'
COOPERATIVE and JEFFREY JONES

Defendants.

No. C 98-0088 CRB

NOTICE OF APPEAL OF
ORDER DENYING MOTION
TO DISMISS IN CASE NO.
98-0088 CRB

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FILED

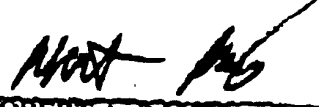
OCT - 8 1998

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

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NOTICE IS HEREBY GIVEN that OAKLAND CANNABIS BUYERS'
COOPERATIVE and JEFFREY JONES, Defendants in the above named case, hereby appeal to
the United States Court of Appeals for the Ninth Circuit from the Order denying the Motion to
Dismiss entered in this action on the ninth day of September, 1998.

Dated: October 8, 1998


ROBERT A. RAICH
Attorney for Defendants
OAKLAND CANNABIS BUYERS'
COOPERATIVE and JEFFREY JONES

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OCT 13 1998

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES,

Plaintiff,

v.

CANNABIS CULTIVATORS CLUB, et al.,

Defendants.

_____ /
and Related Cases.
_____ /

No. C 98-00085 CRB
C 98-00086 CRB
C 98-00087 CRB
C 98-00088 CRB
C 98-00245 CRB

ORDER MODIFYING INJUNCTION
IN CASE NO. 98-00088 (Oakland
Cannabis Buyers' Cooperative)

The preliminary injunction issued on May 19, 1998 in the above action is HEREBY
MODIFIED to provide as follows:

The United States Marshal is empowered to enforce this Preliminary
Injunction. In particular, the United States Marshal is authorized to enter the
premises of the Oakland Cannabis Buyers' Cooperative at 1755 Broadway,
Oakland, California, at any time of the day or night, evict any and all tenants,
inventory the premises, and padlock the doors, until such time that defendants
can satisfy the Court that they are no longer in violation of the injunctive order
and that they would in good faith thereafter comply with the terms of the order.

The Court will stay the imposition of the modification to the injunction until 5:00 p.m. on


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United States District Court
For the Northern District of California

1 Friday, October 16, 1998 to give defendants the opportunity to seek interim appellate relief.

2 IT IS SO ORDERED.

3 Dated: October 13, 1998



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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ORIGINAL
FILED
OCT 13 1998
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES,
Plaintiff,
v.
CANNABIS CULTIVATORS CLUB, et al.,
Defendants.

and Related Cases.

No. C 98-00085 CRB
C 98-00086 CRB
C 98-00087 CRB
C 98-00088 CRB
C 98-00245 CRB

MEMORANDUM AND ORDER RE:
MOTIONS IN LIMINE AND ORDER
TO SHOW CAUSE IN CASE NO. 98-
00088 (Oakland Cannabis Buyers'
Cooperative)

Now before the Court are plaintiff's motions in limine to exclude defendants' affirmative defenses and the Court's Order to Show Cause why defendants are not in contempt of the Court's May 19, 1998 order. After carefully considering the papers and evidence submitted by the parties, and having had the benefit of oral argument on October 5, 1998, plaintiff's motions are GRANTED. The Court further finds that defendants have not offered any evidence to controvert plaintiff's evidence that defendants' violated the May 19, 1998 preliminary injunction order. Thus, defendants are in contempt of the injunction.

BACKGROUND

On May 19, 1998, the Court issued an order preliminarily enjoining defendants Oakland Cannabis Buyers' Cooperative ("OCBC") and Jeffrey Jones, from, among other things, "engaging in the manufacture or distribution of marijuana, or the possession of marijuana with the intent to manufacture or distribute marijuana, in violation of 21 U.S.C.

1 § 841(a)(1),” and “using the premises of 1755 Broadway, Oakland, California for the
2 purposes of engaging in the manufacture and distribution of marijuana.” Upon motion of the
3 plaintiff, and after hearing oral argument and considering the papers submitted by the parties,
4 the Court ordered defendants to show cause “why they should not be held in civil contempt
5 of the Court’s May 19, 1998 Preliminary Injunction Order by distributing marijuana and by
6 using the premises of 1755 Broadway, Oakland, California, for the purpose of distributing
7 marijuana, on May 27, 1998.” The show cause order was based upon evidence submitted by
8 plaintiff as follows:

9 (1) On May 20, 1998, one day after the Court entered the injunction, defendants
10 OCBC and Jeffrey Jones issued a press release entitled “Oakland Cooperative to Openly
11 Dispense Medical Marijuana for First Time Since Preliminary Injunction - U.S. Attorney to
12 be Notified: HIV, Multiple Sclerosis and Other Seriously Ill Patients to Receive Pot at 11:00
13 a.m., Thursday May 21, Oakland Buyers Cannabis Cooperative, 1755 Broadway, Oakland.”

14 (2) A declaration from Special Agent Peter Ott that on May 21, 1998, he entered the
15 OCBC in an undercover capacity and observed approximately fourteen sales or distributions
16 of what appeared to be marijuana by persons associated with the OCBC, including Jeffrey
17 Jones, several of which were made in front of news cameras.

18 (3) Evidence that the World Wide Web site of the OCBC, which indicates that it was
19 updated on June 1 and August 12, 1998, states: “Currently, we are providing medical
20 cannabis and other services to over 1,300 members.”

21 (4) A declaration from Special Agent Bill Nyfeler that on May 27, 1998 he placed a
22 recorded telephone call to the OCBC, at (510) 832-5346. The individual who answered the
23 phone informed Special Agent Nyfeler that the OCBC was still open for business, and told
24 Special Agent Nyfeler the club's business hours.

25 (5) A declaration from Special Agent Dean Arnold that on June 16, 1998 he placed a
26 recorded telephone call to the OCBC, at (510) 843-5346. An unidentified male answered the
27 telephone and informed Special Agent Arnold that the OCBC was open for business and was
28 accepting new members. The unidentified male further informed Special Agent Arnold

1 about the requirements of becoming an OCBC member, the hours that the club was open (11
2 a.m. - 1 p.m., and 5 p.m. - 7 p.m.), and the location of the OCBC, at 1755 Broadway Avenue,
3 in Oakland.

4 (6) Evidence that in an article entitled *Marijuana Clubs Defy Judge's Order* by Karyn
5 Hunt, which appeared on May 22, 1998, in *AP Online*, defendant Jeffrey Jones is quoted as
6 stating, "We are not closing down. We feel what we are doing is legal and a medical
7 necessity and we're going to take it to a jury to prove that."

8 The Court's show cause order specifically advised defendants that their response to
9 the order should include sworn declarations outlining the factual basis for any affirmative
10 defenses which they wish to offer.

11 In response to the show cause order, defendants argue (1) that plaintiff has not made a
12 prima facie showing that defendants violated the Court's injunction, and (2) in the
13 alternative, that defendants have submitted evidence sufficient to support their affirmative
14 defenses of "joint user," "necessity," and "substantive due process." Defendants incorporate
15 all declarations previously filed in this case, and have submitted 12 new declarations,
16 including declarations from eight OCBC patients. The patients testify as to their need for
17 marijuana to alleviate the symptoms of their serious illnesses or disabilities. Of the eight
18 patients, none states that he or she received marijuana from defendants on May 21, 1998,
19 although four, Michael M. Alcalay, M.D., M.P.H., Albert Dunham, Kenneth Estes, and
20 Yvonne Westbrook attest that they were present at the OCBC on that date. The other four do
21 not declare that they were present at the OCBC on May 21.

22 Several of the declarants, including Dr. Alcalay, the OCBC Medical Director, Laura
23 A. Galli, R.N., an OCBC patient and volunteer nurse, and James D. McClelland, the OCBC
24 Chief Financial Officer and an OCBC board member, testify as to the OCBC's strict
25 requirements for admission to the OCBC. In addition, defendants offer the expert testimony
26 of Harvard physician Lester Grinspoon, M.D. and John P. Morgan, M.D., Professor of
27 Pharmacology at City University of New York as to the medical benefits of marijuana and
28 why other drugs, such as Marinol, are not a reasonable alternative for some patients. At

1 defendants' request, the Court also takes judicial notice of the physician declarations filed in
2 Conant v. McCaffrey, 97-0139 FMS.

3 Plaintiff has moved in limine to exclude defendants' affirmative defenses and
4 defendants have moved for an order granting use immunity to defendants Jeffrey Jones and
5 other witnesses who are unwilling to testify in this action without such immunity. The Court
6 heard oral argument on October 5, 1998, and thereafter took the matter under submission.

7 **DISCUSSION**

8 **I. THE MOTIONS FOR IMMUNITY.**

9 District courts generally do not have the authority to confer use immunity for defense
10 witnesses who invoke the Fifth Amendment privilege against self-incrimination. See United
11 States v. Baker, 10 F.3d 1374, 1414 (9th Cir. 1993). In Simmons v. United States, 390 U.S.
12 377 (1968), however, the Supreme Court held that "when a defendant testifies in support of a
13 motion to suppress evidence on Fourth Amendment grounds, his testimony may not
14 thereafter be admitted against him at trial on the issue of guilt unless he makes no objection."
15 Id. at 394 ("we find it unconscionable that one constitutional right should have to be
16 surrendered in order to assert another"). The Third Circuit subsequently extended Simmons
17 to a criminal defendant confronted with the dilemma of whether to offer favorable testimony
18 at his bail hearing, which testimony was required because of a presumption of dangerousness
19 arising under the Bail Reform Act, or safeguard his Fifth Amendment right not to testify.
20 See United States v. Perry, 788 F.2d 100, 115-16 (3d Cir. 1986). The Perry court held that
21 the trial court should have granted the defendant use immunity because the defendant's
22 testimony at the bail hearing was "necessary to vindicate the most fundamental of all
23 constitutional rights, the right of liberty from civil incarceration." Id. at
24 116.

25 Defendant Jones argues that he, too, is being forced to choose between his Fifth
26 Amendment privilege and his right of liberty since he might be fined or even jailed as a
27 sanction if he is found in contempt. Plaintiff, however, has represented that it is not seeking
28 fines or incarceration to compel Jones to comply with the Court's injunction and the Court

1 will not consider such remedies. As Jones is not being forced to choose between competing
2 constitutional rights, Simmons and Perry are inapplicable even assuming they apply to
3 defendants in a civil contempt proceeding.

4 Defendants also argue that the Court can and should grant use immunity to
5 defendants' witnesses to protect defendants' right to due process and a fair trial. In United
6 States v. Lord, 711 F.2d 887, 890-92 (9th Cir. 1983), and United States v. Westerdahl, 945
7 F.2d 1083, 1085-87 (9th Cir. 1991), the Ninth Circuit recognized that a defendant may be
8 denied a fair trial as a result of the government's failure to provide use immunity to the
9 testimony of a defense witness. Lord and Westerdahl are inapplicable to these contempt
10 proceedings for two reasons.

11 First, both cases were criminal prosecutions where the defendant's right to liberty was
12 at stake. Defendants have not cited any cases, and the Court is aware of none, in which the
13 Lord and Westerdahl principle has been extended to civil cases.

14 Second, the Ninth Circuit requires some prima facie evidence of prosecutorial
15 misconduct before a grant of immunity may be given. See Baker, 10 F.3d at 1414;
16 Westerdahl, 945 F.2d at 1086; Lord, 711 F.2d at 892. In Westerdahl, for example, the
17 government had granted immunity to a key prosecution witness, but had refused to immunize
18 defendant's potentially exculpatory witness. The court held that the district court should
19 have held an evidentiary hearing to determine if the government "intentionally distorted the
20 facts." Id. at 1087. Defendants have not made such a prima facie showing here. At best, all
21 that defendants have shown is that plaintiff has refused to immunize defendants' witnesses,
22 forcing the witnesses to decide whether to testify in the contempt proceeding or potentially
23 incriminate themselves. Such a choice cannot in and of itself constitute misconduct since a
24 defendant "has no absolute right not to be forced to choose between testifying in a civil
25 matter and asserting his Fifth Amendment privilege." Keating v. Office of Thrift
26 Supervision, 45 F.3d 322, 326 (9th Cir. 1995).

27 //

28 //

1 II. THE MOTIONS IN LIMINE.

2 A. The Legal Standard.

3 A defendant is entitled to have the judge instruct the jury on his theory of defense only
4 if it is “supported by law and has some foundation in evidence.” United States v.
5 Gomez-Osorio, 957 F.2d 636, 642 (9th Cir. 1992). A district judge may preclude a party
6 from offering evidence in support of a defense, including a necessity defense, by granting a
7 motion in limine. See United States v. Aguilar, 883 F.2d 662, 692 (9th Cir. 1989); United
8 States v. Dorrell, 758 F.2d 427, 430 (9th Cir. 1985). “The sole question presented in such
9 situations is whether the evidence, as described in the offer of proof, is insufficient as a
10 matter of law to support the proffered defense.” Dorrell, 758 F.2d at 430. “If it is, then the
11 trial court should exclude the defense and the evidence offered in support.” Id.

12 B. The “Joint User” Defense.

13 In United States v. Swiderski, 548 F.2d 445 (2nd Cir. 1977), defendants, husband and
14 wife, were charged with violating 21 U.S.C. § 841(a) by possessing cocaine with intent to
15 distribute. See id. at 447. The Second Circuit held that “a statutory ‘transfer’ could not
16 occur between two individuals in joint possession of a controlled substance simultaneously
17 acquired for their own use.” United States v. Wright, 593 F.2d 105, 107 (9th Cir. 1979)
18 (discussing Swiderski). The court thus concluded that the trial judge erred by denying “the
19 jury the opportunity to find that the defendants, who bought the drugs in each other’s
20 physical presence, intended merely to share the drugs” and thus, not to distribute them. Id.;
21 Swiderski, 548 F.2d at 450.

22 Defendants here, unlike the defendants in Swiderski, have not offered any evidence of
23 the literal joint purchase of the marijuana they are alleged to have distributed on May 27,
24 1998. Defendants contend nonetheless that because the OCBC is operated as a cooperative,
25 the marijuana is effectively purchased together by all its members and is consumed together
26 by all its members since the marijuana is only distributed to members of the cooperative.
27 Thus, defendants argue, they are entitled to a Swiderski instruction.

28 The Court declines to extend Swiderski to the facts as presented by defendants’

1 proffer, namely a medical marijuana cooperative. As the Court has previously noted,
2 Swiderski involved a simultaneous purchase by a husband and wife who testified they
3 intended to use the controlled substance immediately. Applying Swiderski to a medical
4 marijuana cooperative would extend Swiderski to a situation in which the controlled
5 substance is not literally purchased simultaneously for immediate consumption. See United
6 States v. Cannabis Cultivators Club, 5 F.Supp.2d 1086, 1101 (N.D. Cal. 1998). In light of
7 the fact that Swiderski has never been so extended, and in light of the fact that it has not been
8 adopted by the Ninth Circuit, the Court concludes that such a defense is not available on the
9 facts proffered by defendants as a matter of law.

10 C. The Necessity Defense.

11 To be entitled to a jury instruction on the defense of necessity, defendants must offer
12 evidence (1) that they were faced with a choice of evils and chose the lesser evil; (2) they
13 acted to prevent imminent harm; (3) they reasonably anticipated a direct causal relationship
14 between their conduct and the harm to be averted; and (4) that there were no legal
15 alternatives to violating the law. See United States v. Aguilar, 883 F.2d 662, 693 (9th Cir.
16 1989). Defendants have produced evidence that marijuana has a medical benefit to many
17 persons and that for some persons marijuana is the only drug that can alleviate their pain and
18 other debilitating symptoms. They also have submitted evidence that they carefully screen
19 their members to ensure that they have a physician's recommendation for marijuana use.
20 Further, the Court will assume, without deciding, that the four OCBC patients who have
21 submitted declarations and admit to having been present at the OCBC on May 21, 1998, have
22 submitted sufficient evidence as to their need for marijuana to permit a trier of fact to
23 determine if they have a legal necessity for marijuana.

24 Plaintiff argues that a necessity defense based upon a medical need for marijuana is
25 never available under any circumstances as a defense to a violation of the Controlled
26 Substances Act because Congress implicitly rejected such a defense by placing marijuana in
27 Schedule I. The Court need not address this issue, however, because it concludes that
28 defendants have not produced sufficient evidence in their offer of proof to permit a defense

1 of necessity to the charge that they violated the injunction.

2 In Aguilar, the Ninth Circuit considered a necessity defense offer of proof similar to
3 that offered by defendants here. The Aguilar defendants were charged with violations of the
4 immigration laws, arising from their providing sanctuary to Central American refugees.
5 With respect to the specificity required of a necessity offer of proof, the court held:

6 We also doubt the sufficiency of the proffer to establish imminent harm. The
7 offer fails to specify that the particular aliens assisted were in danger of
8 imminent harm. Instead, it refers to general atrocities committed by
9 Salvadoran, Guatemalan, and Mexican authorities. The only indication that
10 appellants intended to show that the aliens involved in this action faced
11 imminent harm was their proffer that they adopted a process to screen aliens in
12 order to assure themselves that those helped actually were in danger. This
13 allegation fails for lack of specificity.

14 Id. at 692 n.28 (emphasis added). Defendants' proffer here likewise fails to identify evidence
15 that demonstrates that each of the particular persons to whom they distributed marijuana on
16 May 21, 1998 was in danger of imminent harm.

17 Plaintiff has submitted the declaration of a Special Agent Ott who testifies that he
18 personally witnessed fourteen marijuana transactions on May 21, 1998. Moreover,
19 defendants' evidence suggests that they may have distributed marijuana to as many as 191
20 "visitors" to the OCBC on May 21, 1998. Defendants, however, have proffered evidence as
21 to only four patients who admit to visiting the OCBC on May 21. Assuming that these four
22 patients obtained marijuana from the OCBC on May 21, defendants have, at best, offered a
23 necessity defense to only four of the fourteen transactions identified by plaintiff, putting
24 aside the fact that defendants' own evidence suggests there were as many as 191 marijuana
25 transactions that day. Such a proffer does not meet the specificity requirements of Aguilar,
26 namely, that defendants proffer evidence that the particular persons to whom they distributed
27 marijuana were as a matter of fact in danger of imminent harm. As the Court stated before
28 the injunction was issued, "for the defense of necessity to be available here, defendants
would have to prove that each and every patient to whom it provides cannabis is in danger in
imminent harm; that the cannabis will alleviate the harm for that particular patient; and that
the patient had no other alternatives, for example, that no other legal drug could have
reasonably averted the harm." Cannabis Cultivators Club, 5 F.Supp.2d at 1102 (emphasis

1 added). Defendants have not done so in response to the show cause order, and they have not
2 offered that they could do so at a jury trial.

3 Moreover, under Aguilar, defendants' evidence as to the OCBC's stringent admission
4 requirements and their evidence as to the medical benefits of marijuana generally, rather than
5 to the particular persons to whom defendants distributed marijuana on May 21, is immaterial
6 as a matter of law. The defendants must show that each person to whom they distributed
7 marijuana was actually in danger of imminent harm. It is not sufficient that defendants
8 reasonably believed each person to be in such danger.

9 Defendants contend that a jury should be allowed to consider their necessity defense
10 because their evidence demonstrates that on May 21, 1998 they were in substantial
11 compliance with the Court's injunction. Under defendants' reasoning, however, a defendant
12 would be excused from complying with the Controlled Substances Act because some, but not
13 all, of the people to whom they distributed marijuana had a legal necessity. No case of which
14 this Court is aware has ever allowed such a blanket exemption to the criminal laws.

15 Defendants argue in the alternative that their proffer could not be more specific
16 because plaintiff failed to identify the specific persons to whom plaintiff alleges defendants
17 distributed marijuana. The Order to Show Cause, however, was limited to a single day and
18 the plaintiff's evidence as to the government agent's personal observation of fourteen
19 marijuana transactions in the OCBC -- transactions which the defendants announced publicly
20 in advance and invited the public, including the United States Attorney for the Northern
21 District of California, to witness -- occurred during a fifteen to twenty minute period.
22 Plaintiff's evidence thus places particular transactions at issue. If defendants did not
23 distribute marijuana on May 21, 1998, they could offer evidence that they did not. If they
24 did distribute marijuana that day, such distribution violated the injunction. See Cannabis
25 Cultivators Club, 5 F.Supp.2d at 1100 (holding that the Controlled Substances Act "does not
26 exempt the distribution of marijuana to seriously ill persons for their personal medical use").
27 If they believe their violations of the injunction are excused by the defense of necessity, it is
28 incumbent upon defendants to come forward with the evidence to support their defense as to

1 each violation. They have not done so for all, or even most, of the transactions at issue.
2 Accordingly, their defense of necessity fails as a matter of law.

3 **D. Substantive Due Process.**

4 Defendants contend that they are not in contempt because the OCBC members have a
5 fundamental right to “a demonstrated and effective treatment as recommended by their
6 physician that can alleviate their agony, preserve their sight, and save their lives.”
7 Assuming, without deciding, that such a fundamental right exists, the defense fails for the
8 same reason their necessity defense fails; defendants have failed to proffer evidence that each
9 and every person to whom they distributed marijuana needed the marijuana to protect such a
10 fundamental right. See Cannabis Cultivators Club, 5 F.Supp.2d at 1103. To hold otherwise
11 would mean that because defendants have a substantive due process defense to some of the
12 marijuana distributions in which they engaged, they are excused from all of their violations
13 of the injunction. Defendants have not cited any case law or legal principles that would
14 permit such an exemption from the federal laws.

15 **II. THE CONTEMPT PROCEEDINGS.**

16 **A. Whether Defendants Are In Contempt.**

17 The Court preliminarily enjoined defendants from violating the Controlled Substances
18 Act pursuant to 21 U.S.C. section 882(a). As this Court has previously noted, 21 U.S.C.
19 section 882(b) provides that “[i]n case of an alleged violation of an injunction or restraining
20 order issued under this section, trial shall, upon demand of the accused, be by jury in
21 accordance with the Federal Rules of Civil Procedure.” The plaintiff nonetheless argues that
22 the Court should find defendants in contempt without a jury trial because plaintiff’s evidence
23 of defendants’ violation of the Court’s injunction is uncontroverted.

24 In the Ninth Circuit, a civil contempt proceeding is a trial within the meaning of
25 Federal Rule of Civil Procedure 43(a), rather than a hearing on a motion within the meaning
26 of Rule 43(e). See Hoffman v. Beer Drivers and Salesmen’s Local Union No. 888, 536 F.2d
27 1268, 1277 (9th Cir. 1976). A trial with live testimony, however, is not always required
28 before contempt sanctions may be issued. In Peterson v. Highland Music, Inc., 140 F.3d

1 1313 (9th Cir. 1998), cert. pet. filed Sep. 14, 1998, for example, the district court commenced
2 contempt proceedings by issuing an order to show cause. The court then had the parties file
3 affidavits and extensively brief the relevant issues. The court did not, however, hold an
4 evidentiary hearing (or trial) with live testimony. Instead, the district court issued its
5 contempt sanctions at the end of the hearing on the order to show cause. See id. at 1324.

6 The Ninth Circuit affirmed the imposition of the contempt sanctions. The court held
7 that while “ordinarily” a court should not impose contempt sanctions on the basis of
8 affidavits, “[a] trial court may in a contempt proceeding narrow the issues by requiring that
9 affidavits on file be controverted by counter-affidavits and may thereafter treat as true the
10 facts set forth in uncontroverted affidavits.” Id. (quoting Hoffman, 536 F.2d at 1277). The
11 court concluded that such procedures do not violate due process.

12 Defendants contend that the Court must grant them a jury trial on the issue of
13 contempt because “[f]actfinding is usually a function of the jury, and the trial court rarely
14 rules on a defense as a matter of law.” United States v. Contento-Pachon, 723 F.2d 691, 693
15 (9th Cir. 1984). Defendants also urge that a court should exclude evidence of a defense only
16 if the evidence is insufficient as a matter of law to support the defense. See id. The Court
17 agrees. Here, however, the Court has ruled that the evidence submitted by defendants is
18 insufficient as a matter of law to support the defenses of “joint user,” “necessity,” and
19 “substantive due process.” The question presented is thus whether there are any “facts” for a
20 jury to decide. Defendants have offered no facts whatsoever to controvert plaintiff’s
21 evidence that defendants distributed marijuana at the OCBC on May 21, 1998. Nor have
22 they identified any evidence that they could present to a jury that they have not already
23 presented that would create a dispute of fact. If there are no facts to be decided by a jury,
24 there is no reason to have a jury trial.

25 The Court has reviewed the statute conferring the right to a jury trial and concludes
26 that its decision that defendants are entitled to a jury trial only if there is a material dispute of
27 fact is not inconsistent with the statute. Congress provided defendants with a right to a jury
28 trial “in accordance with the Federal Rules of Civil Procedure.” 21 U.S.C. § 882(b). Thus,

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ORIGINAL
FILED

OCT 15 1998

FEDERAL DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

13
 14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 16

17 UNITED STATES OF AMERICA,
 18 Plaintiff,
 19 v.
 20 CANNABIS CULTIVATOR'S CLUB, et al.,
 21 Defendants.
 22

No. C 98-00088 CRB

**DEFENDANTS' EX PARTE
 APPLICATION TO STAY ORDER
 MODIFYING INJUNCTION PENDING
 APPEAL AND MOTION TO MODIFY
 PRELIMINARY INJUNCTION ORDER
 TO PERMIT DISTRIBUTION OF
 CANNABIS ONLY TO PATIENTS
 WITH A MEDICAL NECESSITY**

(Fed. R. Civ. P. 62, Local Rule 7-11)

Date:
 Time:
 Courtroom: 8
 Hon. Charles R. Breyer

24
 25 AND RELATED ACTIONS.
 26
 27
 28

1 **TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:**

2 Pursuant to Federal Rule of Civil Procedure 62 and Local Rule 7-11, defendants Jeffrey Jones
3 and the Oakland Cannabis Buyers' Cooperative ("defendants") bring this *ex parte* application to stay
4 modification of the preliminary injunction order originally dated May 19, 1998 ("Preliminary
5 Injunction Order") pending appeal to the Ninth Circuit Court of Appeals. Alternatively, defendants
6 request that this Court briefly stay imposition of the modification until such time as defendants can
7 submit within the coming week, and obtain a hearing on, an emergency request for a stay by the
8 Court of Appeals. Defendants also bring this *ex parte* motion to modify the Preliminary Injunction
9 Order to permit distribution of cannabis only to those patients who have a medical necessity for
10 cannabis.

11 **STATEMENT OF FACTS**

12 On October 13, 1998, this Court granted the government's motions in limine to exclude
13 defendants' defenses and evidence at trial, and it found the defendants in contempt of the Preliminary
14 Injunction Order. Memorandum and Order Re: Motions In Limine and Order To Show Cause In
15 Case No. 98-00088 (Oakland Cannabis Buyers' Cooperative) ("Mem. Op. & Order") at 13. The
16 Court also granted the government's request to modify the language of the Preliminary Injunction
17 Order as follows:

18 The United States Marshal is empowered to enforce this Preliminary
19 Injunction. In particular, the United States Marshal is authorized to
20 enter the premises of the Oakland Cannabis Buyers' Cooperative at
21 1755 Broadway, Oakland, California, at any time of the day or night,
22 evict any and all tenants, inventory the premises, and padlock the
23 doors, until such time that defendants can satisfy the Court that they are
24 no longer in violation of the injunctive order and that they would in
25 good faith thereafter comply with the terms of the order.

26 *Id.* at 13. The Court stayed imposition of the modification until 5:00 p.m. on October 16, 1998, "to
27 give defendants the opportunity to seek interim appellate relief." *Id.*

28 On October 14, 1998, counsel for Oakland defendants Andrew Steckler telephoned Mark
Quinlivan and notified him of the Oakland defendants' intention to file this *ex parte* motion.
(Declaration of Andrew A. Steckler in Support of Defendants' *Ex Parte* Motion ("Steckler Decl.")),

28

1 filed herewith, at ¶ 2.) Mr. Quinlivan indicated that the government opposes each of the defendants'
2 requests presented in this *ex parte* application. *Id.*

3 ARGUMENT

4 I. THIS COURT SHOULD STAY IMPOSITION OF THE 5 MODIFICATION OF THE PRELIMINARY INJUNCTION ORDER 6 PENDING APPEAL, OR ALTERNATIVELY, UNTIL THE COURT OF 7 APPEAL RULES ON AN EMERGENCY MOTION FOR A STAY.

8 A district court has the discretion to stay the modification of an injunction order during the
9 pendency of an appeal “as it considers proper for the security of the rights of the adverse party.”
10 Fed. R. Civ. P. 62(c); *see also* Fed. R. App. P. 8(a). This rule “codifies the inherent power of courts
11 to make whatever order is deemed necessary to preserve the status quo and to ensure the
12 effectiveness of the eventual judgment.” *Tribal Village of Akutan v. Hodel*, 859 F.2d 662, 663 (9th
13 Cir. 1988) (quoting C. Wright & A. Miller, 11 Federal Practice and Procedure, § 2904 at 315 (1973)).
14 The factors regulating the issuance of a stay include: (1) whether the stay applicant has made a
15 strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably
16 injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties
17 interested in the proceeding; and (4) where the public interest lies. *Hilton v. Braunskill*, 481 U.S.
18 770, 776 (1987). The Supreme Court has stated that “the formula cannot be reduced to a set of rigid
19 rules.” *Id.* at 777. In determining whether to stay an injunction, courts in this circuit apply the same
20 standard used when considering a motion for preliminary injunction. *Tribal Village*, 859 F.2d at 663.
21 Under this standard, the moving party must demonstrate either (1) a combination of probable success
22 on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the
23 balance of hardships tips sharply in its favor. *Id.* In this circuit, the Court may also consider the
24 public interest in certain cases. *Id.*

25 To obtain a stay, the movant need not show that the court’s initial ruling was incorrect; it need
26 only show that the appeal raises serious questions of law. *See* Schwarzer, Tashima & Wagstaffe,
27 *California Practice Guide: Federal Civil Procedure Before Trial* § 13:222.1 (1998). As the court
28 stated in *Standard Havens Products, Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 512 (Fed. Cir. 1990),
each factor need not be given equal weight and “likelihood of success in the appeal is not a rigid

1 concept. . . .” See also *Washington Metro. Area Transit Comm’n v. Holiday Tours*, 559 F.2d 841, 844
2 (D.C. Cir. 1977) (movant need not show “mathematic probability of success” and “tribunals may
3 properly stay their own orders when they have ruled on an admittedly difficult legal question and
4 when the equities of the case suggest that the status quo should be maintained”). Indeed, Judge Conti
5 granted a stay even where the court was “doubtful as to the strength of defendants’ showing of likely
6 success on appeal,” where the movant’s showing on other factors of balance of hardships, irreparable
7 injury, and public interest was strong. *In re Hayes Microcomputer Products, Inc. Patent Litig.*,
8 766 F. Supp. 818, 823 (N.D. Cal. 1991), *aff’d*, 982 F.2d 1527 (9th Cir. 1992) (granting stay of
9 injunction pending appeal even after full jury trial concluded in finding of patent infringement).

10 This Court should exercise its discretion to enter a stay pending appeal here because several
11 factors weigh strongly in favor of a stay and none weigh against it. First, like the movants in *In re*
12 *Hayes*, defendants here “have presented the court with persuasive evidence of the severe hardship
13 they will suffer if the [modification of the] injunction is not stayed pending appeal.” *In re Hayes*, 766
14 F. Supp. at 823. Indeed, the Court itself has recognized “the human suffering that will be caused by
15 plaintiff’s success in closing down the OCBC.” Mem. Op. & Order at 13. Defendants have
16 submitted detailed and specific evidence showing that *at least* four patient-members who visited the
17 Cooperative on May 21 have a medical necessity for cannabis, that two-thirds of these patients suffer
18 from AIDS/HIV, and they have submitted additional evidence that many other patient-members also
19 have a medical necessity. Moreover, defendants have submitted detailed and specific evidence that
20 cannabis has kept *at least* some patient-members alive. The government, by contrast, has submitted
21 absolutely no evidence that even suggests any hardship it would suffer were the stay pending appeal
22 to be granted. In sum, if ever the balance of hardships tips sharply in a party’s favor this is that case.
23 The death or physical suffering of a patient-member of the Cooperative clearly constitutes
24 “irreparable injury” requiring a stay.

25 Second, this Court is aware that serious legal questions are raised by this appeal. Defendants
26 believe they are likely to succeed on the merits on appeal based in part upon what they perceive as
27 certain fundamental legal and factual errors underlying the Court’s Memorandum and Order. But, as
28 discussed above, to grant a stay this Court need not agree with defendants as to their likelihood of

1 success on the merits on appeal given that the balance of hardships tips strongly in defendants' favor.
2 See, e.g., *In re Hayes*, 766 F. Supp. at 823. The mere fact that the appeal raises serious legal
3 questions is sufficient reason for this Court to grant the stay. *Schwarzer, et al., supra*, at 13:222;
4 *Washington Metro*, 559 F.2d at 844.

5 Finally, this Court should consider the public interest in this case in its determination whether
6 to grant a stay pending appeal. Here, the public interest weighs heavily in favor of granting a stay.
7 The public interest is manifested in many different respects, including but not limited to: the City of
8 Oakland's *Amicus Curiae* Brief In Support of Defendants' Motion To Dismiss Complaint in C 98-
9 0088 CRB filed August 24, 1998; the Counterclaim-in-Intervention For Declaratory and Injunctive
10 Relief filed by the patient-intervenors on October 5, 1998; and the will of citizens of the State of
11 California with the passage of Proposition 215 in 1996. More specifically, the public interest will
12 best be served here by maintaining the lives and health of the Cooperative patient-members who have
13 no alternative to cannabis to treat their conditions.

14 Should the Court deny defendants' request for a stay pending appeal, defendants request, in
15 the alternative, that the Court stay the imposition of the modification of the injunction for a brief
16 period in order to allow defendants an opportunity to seek an emergency stay from the Court of
17 Appeals, and in order to enable the Court of Appeals to rule on an emergency motion for a stay.
18 Given the requirement that defendants first seek a stay from this Court, (*see* Fed. R. App. P. 8(a)),
19 defendants do not believe that the Court's present stay until October 16, 1998 provides sufficient
20 time to seek the necessary relief.

21 **II. THIS COURT SHOULD MODIFY THE PRELIMINARY INJUNCTION**
22 **ORDER TO PERMIT PATIENTS WITH A MEDICAL NECESSITY TO**
23 **OBTAIN CANNABIS FROM DEFENDANTS.**

24 This Court has the power to modify a preliminary injunction order during the pendency of
25 appeal from an earlier order granting or modifying a preliminary injunction "as it considers proper for
26 the security of the right of the adverse party." Fed. R. Civ. P. 62(c). It may also modify the order
27 pursuant to Federal Rule of Civil Procedure 60(b)(6).

28 As this Court has recognized the necessity defense applies to defendants and patients who
offer evidence that satisfy the criteria set forth in *United States v. Aguilar*, 883 F.2d 662, 693 (9th Cir.

1 1989). The Court also recognized that this defense applies to at least some of the Cooperative's
2 members. Mem. Op. & Order at 7. Therefore, and in light of the dire need of these patients for the
3 only medicine that can help them, defendants propose the following modification of the Preliminary
4 Injunction Order:

5 Notwithstanding the foregoing, the Oakland Cannabis Buyers' Cooperative
6 patient-members who fit the following description may obtain cannabis from the
7 Cooperative to alleviate and/or treat a serious medical condition: patients whose
8 doctors certify that (1) the patient suffers from a serious medical condition; (2) if
9 the patient does not have access to cannabis the patient will suffer imminent
10 harm; (3) cannabis is necessary for the treatment of the patient's medical
11 condition or cannabis will alleviate the medical condition or symptoms associated
12 with it; (4) there is no legal alternative to cannabis for the effective treatment of
13 the patient's medical condition because the patient has tried other legal
14 alternatives to cannabis and has found them ineffective in treating his or her
15 condition, or has found that such alternatives result in intolerable side effects.

16 This Court acknowledged that it "understands defendants' argument that in this action the
17 Court is sitting in equity and therefore must consider the human suffering that will be caused by
18 plaintiff's success in closing down the OCBC." Mem. Op. & Order at 13. By entering the
19 defendants' proposed modification to the injunction, the Court would avert, within the parameters of
20 federal law, the "human suffering" it has recognized will be caused by the government's success.

21 CONCLUSION

22 For the foregoing reasons, the Oakland defendants respectfully request this Court grant their
23 request for a stay pending appeal. Alternatively, defendants request that the stay be continued in
24 effect at least until such time as the defendants can submit, and obtain a hearing on, an emergency
25 request for a stay by the Court of Appeals. Finally, defendants respectfully request this Court to enter
26 their proposed modification of the Preliminary Injunction Order, or to provide for a hearing on same
27 as soon as is practicable.

28 Dated: October 15, 1998

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 425 Market Street
 9 San Francisco, California 94105-2482
 Telephone: (415) 268-7000

10 Attorneys for Defendants
 11 OAKLAND CANNABIS BUYERS'
 COOPERATIVE AND JEFFREY JONES

OCT 15 1998

13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,
 17 Plaintiff,
 18 v.
 19 CANNABIS CULTIVATOR'S CLUB, et al.,
 20 Defendants.

No. C 98-00088 CRB

DECLARATION OF ANDREW A. STECKLER IN SUPPORT OF DEFENDANTS' EX PARTE APPLICATION TO STAY ORDER MODIFYING INJUNCTION PENDING APPEAL

Date:
 Time:
 Courtroom: 8
 Hon. Charles R. Breyer

24 AND RELATED ACTIONS.

28 **DECLARATION OF ANDREW A. STECKLER IN SUPPORT OF DEFENDANTS' EX PARTE APPLICATION TO STAY ORDER MODIFYING INJUNCTION PENDING APPEAL**
 CASE No. C 98-0088 CRB
 sf-587635

CALENDARED
 MORRISON & FOERSTER LLP

OCT 15 1998

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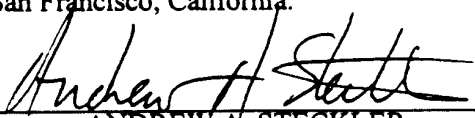
I, ANDREW A. STECKLER, declare:

1. I am a member of the bar of the State of California, and an associate at the law firm of Morrison & Foerster LLP, and represent defendants Jeffrey Jones and the Oakland Cannabis Buyers' Cooperative in this matter. I have personal knowledge of the facts stated herein, and if called as a witness, I could and would testify competently as to them.

2. On October 14, 1998, I telephoned Mark Quinlivan and notified him of the Oakland defendants' intention to file an *ex parte* motion on October 15, 1998 requesting a stay of imposition of the modification of the injunction, or alternatively, a stay for a brief period in order to allow defendants to move the Court of Appeals to rule on an emergency motion for a stay, and requesting a modification of the Preliminary Injunction Order to permit distribution of cannabis only to patients with a medical necessity. Mr. Quinlivan indicated that the government opposes each of these requests.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15th day of October, 1998, at San Francisco, California.



ANDREW A. STECKLER

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CANNABIS CULTIVATOR'S CLUB, et al.,

Defendants.

No. C 98-00088 CRB

**[PROPOSED] ORDER GRANTING
DEFENDANTS' EX PARTE MOTION
TO MODIFY PRELIMINARY
INJUNCTION ORDER TO PERMIT
DISTRIBUTION OF CANNABIS
ONLY TO PATIENTS WITH A
MEDICAL NECESSITY**

(Fed. R. Civ. P. 62, Local Rule 7-11)

Date:
Time:
Courtroom: 8
Hon. Charles R. Breyer

AND RELATED ACTIONS.

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ORDER

This matter comes before the Court on defendants Jeffrey Jones' and the Oakland Cannabis Buyers' Cooperative's *Ex Parte* Motion To Modify Preliminary Injunction Order To Permit Distribution Of Cannabis Only To Patients With A Medical Necessity. Upon consideration of the foregoing and the entire record herein, and good cause appearing therefore, the defendants' application and motion is hereby GRANTED.

The Court ORDERS as follows:

The preliminary injunction issued on May 19, 1998 in this action is HEREBY MODIFIED to provide as follows:

Notwithstanding the foregoing, the Oakland Cannabis Buyers' Cooperative patient-members who fit the following description may obtain cannabis from the Cooperative to alleviate and/or treat a serious medical condition: patients whose doctors certify that (1) the patient suffers from a serious medical condition; (2) if the patient does not have access to cannabis the patient will suffer imminent harm; (3) cannabis is necessary for the treatment of the patient's medical condition or cannabis will alleviate the medical condition or symptoms associated with it; (4) there is no legal alternative to cannabis for the effective treatment of the patient's medical condition because the patient has tried other legal alternatives to cannabis and has found them ineffective in treating his or her condition, or has found that such alternatives result in intolerable side effects.

IT IS SO ORDERED.

Dated: October __, 1998

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CANNABIS CULTIVATOR'S CLUB, et al.,

Defendants.

No. C 98-00088 CRB

**[ALTERNATIVE PROPOSED]
ORDER GRANTING DEFENDANTS'
EX PARTE APPLICATION TO STAY
ORDER MODIFYING INJUNCTION
PENDING APPEAL**

(Fed. R. Civ. P. 62, Local Rule 7-11)

Date:
Time:
Courtroom: 8
Hon. Charles R. Breyer

AND RELATED ACTIONS.

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ORDER

This matter comes before the Court on defendants Jeffrey Jones' and the Oakland Cannabis Buyers' Cooperative's *Ex Parte* Application To Stay Order Modifying Injunction Pending Appeal. Upon consideration of the foregoing and the entire record herein, and good cause appearing therefore, the defendants' application and motion is hereby GRANTED.

The Court ORDERS as follows:

The Court hereby stays its October 13, 1998 Order to allow defendants an opportunity to seek an emergency stay from the Court of Appeals, and until the Court of Appeals rules on such emergency motion for a stay.

IT IS SO ORDERED.

Dated: October __, 1998

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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RECEIVED

OCT 15 1998

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CANNABIS CULTIVATOR'S CLUB, et al.,

Defendants.

No. C 98-00088 CRB

**[PROPOSED] ORDER GRANTING
DEFENDANTS' EX PARTE
APPLICATION TO STAY ORDER
MODIFYING INJUNCTION
PENDING APPEAL**

(Fed. R. Civ. P. 62, Local Rule 7-11)

Date:
Time:
Courtroom: 8
Hon. Charles R. Breyer

AND RELATED ACTIONS.

CALENDARED
MORRISON & FOERSTER LLP

OCT 15 1998

FOR DATE(S) _____
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**[PROPOSED] ORDER GRANTING DEFS' EX PARTE APPLICATION TO
STAY ORDER MODIFYING INJUNCTION — C98-00088 CRB
sf-587824**

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ORDER

This matter comes before the Court on defendants Jeffrey Jones' and the Oakland Cannabis Buyers' Cooperative's *Ex Parte* Application To Stay Order Modifying Injunction Pending Appeal. Upon consideration of the foregoing and the entire record herein, and good cause appearing therefore, the defendants' application and motion is hereby GRANTED.

The Court ORDERS as follows:

The Court hereby stays its October 13, 1998 Order pending the resolution of defendants' appeal to the Ninth Circuit Court of Appeals.

IT IS SO ORDERED.

Dated: October __, 1998

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

COPY

1 ROBERT A. RAICH (STATE BAR NO. 147515)
1970 Broadway, Suite 1200
2 Oakland, California 94612
Telephone: (510) 338-0700

3 GERALD F. UELMEN (STATE BAR NO. 39909)
4 Santa Clara University
School of Law
5 Santa Clara, California 95053
Telephone: (408) 554-5729

6 JAMES J. BROSNAN (STATE BAR NO. 34555)
7 ANNETTE P. CARNEGIE (STATE BAR NO. 118624)
8 ANDREW A. STECKLER (STATE BAR NO. 163390)
CHRISTINA V. KIRK-KAZHE (BAR NO. 192158)
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10 Telephone: (415) 268-7000

11 Attorneys for Defendants
12 OAKLAND CANNABIS BUYERS'
COOPERATIVE AND JEFFREY JONES

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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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18 UNITED STATE OF AMERICA,
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20 Plaintiff,
21 v.
22 OAKLAND CANNABIS BUYERS'
COOPERATIVE and JEFFREY JONES,
23 Defendants.

No. C 98-0088 CRB

NOTICE OF APPEAL OF
ORDER MODIFYING
INJUNCTION IN CASE
NO. 98-00088 (OAKLAND
CANNABIS BUYERS'
COOPERATIVE); CIRCUIT
RULE 3-2 REPRESENTATION
STATEMENT

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28 Notice of Appeal of Order Modifying
Injunction in Case No. 98-0088
(Oakland Cannabis Buyers' Cooperative);
Circuit Rule 3-2 Representation Statement
sf-587434

1 NOTICE IS HEREBY GIVEN that OAKLAND CANNABIS BUYERS'
2 COOPERATIVE and JEFFERY JONES, Defendants in the above named case,
3 hereby appeal to the United States Court of Appeals for the Ninth Circuit from the
4 Order Modifying Injunction entered in this action on the thirteenth day of October,
5 1998.

6 Pursuant to Ninth Circuit Rule 3-2, attached is a Representation Statement
7 that identifies all parties to the action, along with the names, addresses and
8 telephone numbers of their respective counsel.

9 Dated: October 16, 1998

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MORRISON & FOERSTER LLP

By: Christina Kirk-Kazhe
Christina V. Kirk-Kazhe

Attorneys for Defendants
OAKLAND CANNABIS BUYERS'
COOPERATIVE AND JEFFREY JONES

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CIRCUIT RULE 3-2 REPRESENTATION STATEMENT

1. Defendants/Appellants are OAKLAND CANNABIS BUYERS' COOPERATIVE and JEFFREY JONES.

Counsel for Defendants/Appellants are:

Robert A. Raiche
1970 Broadway, Suite 1200
Oakland, California 94612
(510) 338-0700

Gerald F. Uelmen
Santa Clara University, School of Law
Santa Clara, California 95053
(408) 554-5729

James J. Brosnahan
Annette P. Carnegie
Sheryl C. Medeiros
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
(415) 268-7000

2. Plaintiff/Appellee is the UNITED STATES OF AMERICA.

Counsel for Plaintiff/Appellee is:

Frank W. Hunger
Robert S. Mueller III
David J. Anderson
Arthur R. Goldberg
Mark T. Quinlivan
U.S. Department of Justice
Civil Division, Room 1048
901 E Street, N.W.
Washington, D.C. 20530
(202) 514-3346

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Dated: October 16, 1998

Respectfully submitted,
MORRISON & FOERSTER LLP

By: Christina Kirk-Kazhe
Christina V. Kirk-Kazhe

Attorneys for Defendants/Appellants
OAKLAND CANNABIS BUYERS'
COOPERATIVE and JEFFREY
JONES.

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**PROOF OF SERVICE BY FACSIMILE TRANSMISSION
(CCP 1013(e), 2015.5)**

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years; and that the document described below was transmitted by facsimile transmission to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause.

I further declare that on the date hereof I served a copy of:

**NOTICE OF APPEAL OF ORDER MODIFYING INJUNCTION IN CASE
NO. 98-0088 (OAKLAND CANNABIS BUYERS' COOPERATIVE);
CIRCUIT RULE 3-2 REPRESENTATION STATEMENT.**

on the following by sending a true copy from Morrison & Foerster's facsimile transmission telephone number (415) 268-7522 and that the transmission was reported as complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting facsimile machine.

SEE ATTACHED SERVICE LIST

SERVICE LIST FOR
OCTOBER 16, 1998 COURT FILING

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Opposing Counsel:

Mark T. Quinlivan
U.S. Department of Justice
901 E Street, N.W., Room 1048
Washington, D.C. 20530

Intevenor-Patients

Thomas V. Loran III, Esq.
Pillsbury Madison & Sutro LLP
235 Montgomery Street
San Francisco, CA 94104

Marin Alliance for Medical Marijuana, et al.

William G. Panzer
370 Grand Avenue, Suite 3
Oakland, CA 94610

Ukiah Cannabis Buyer's Club, et al.

Susan B. Jordan
515 South School Street
Ukiah, CA 95482

David Nelson
106 North School Street
Ukiah, CA 95482

Cannabis Cultivator's Club, et al.

J. Tony Serra/Brendan R. Cummings
Serra, Lichter, Daar, Bustamante,
Michael & Wilson
Pier 5 North, The Embarcadero
San Francisco, CA 94111

Flower Therapy Medical Marijuana Club, et al.

Helen Shapiro
Carl Shapiro
404 San Anselmo Avenue
San Anselmo, CA 94960

Oakland Cannabis Buyers Cooperative, et al.

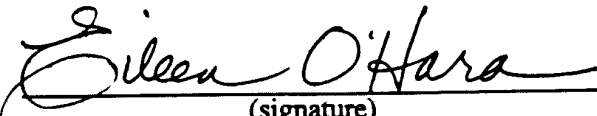
Gerald F. Uelmen
Santa Clara University
School of Law
Santa Clara, CA 95053

Robert A. Raich
A Professional Law Corporation
1970 Broadway, Suite 1200
Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

Executed at San Francisco, California, this 16th day of October, 1998.

Eileen O'Hara
(typed)


(signature)

PROOF OF SERVICE BY MAIL
(CCP 1013a, 2015.5) or

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I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**NOTICE OF APPEAL OF ORDER MODIFYING INJUNCTION IN CASE NO.
98-0088 (OAKLAND CANNABIS BUYERS' COOPERATIVE); CIRCUIT
RULE 3-2 REPRESENTATION STATEMENT.**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

SEE ATTACHED SERVICE LIST

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OCTOBER 16, 1998 COURT FILING

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Opposing Counsel:

Mark T. Quinlivan
U.S. Department of Justice
901 E Street, N.W., Room 1048
Washington, D.C. 20530

Inteviewer-Patients

Thomas V. Loran III, Esq.
Pillsbury Madison & Sutro LLP
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Oakland Cannabis Buyers Cooperative, et al.

Gerald F. Uelmen
Santa Clara University
School of Law
Santa Clara, CA 95053

Robert A. Raich
A Professional Law Corporation
1970 Broadway, Suite 1200
Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed at San Francisco, California, this 16th day of October, 1998.

Eileen O'Hara
(typed)



(signature)

1 PILLSBURY MADISON & SUTRO LLP
THOMAS V. LORAN III #95255
2 MARGARET S. SCHROEDER #178586
235 Montgomery Street
3 Post Office Box 7880
San Francisco, CA 94120-7880
4 Telephone: (415) 983-1000

5 Attorneys for Defendants and Counterclaimants-
in-Intervention Edward Neil Brundridge,
6 Ima Carter, Rebecca Nikkel and
Lucia L. Vier
7
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 _____)
13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 vs.)
16)
17 CANNABIS CULTIVATOR'S CLUB, et al.,)
18 Defendants.)
19 _____)
20 AND RELATED ACTIONS)
_____)

Nos. C 98-00085 CRB
C 98-00086 CRB
C 98-00087 CRB
C 98-00088 CRB
C 98-00245 CRB

DECLARATION OF IMA CARTER IN
SUPPORT OF REQUEST FOR STAY
OF MODIFICATION TO
PRELIMINARY INJUNCTION

21 I, IMA CARTER, declare as follows:
22 1. I am a member of the Oakland Cannabis Buyers' Cooperative in
23 Oakland, California (the "Oakland Coop"). I am submitting this declaration in support
24 of the request of the Oakland Coop to stay modification of the preliminary injunction.
25 Except where stated on information and belief, I have personal knowledge of the
26 matters set forth in this declaration and could and would testify competently to them if
27 called on by the Court to do so.
28

12845328

Carter Decl. re Req. for Stay, Case Nos. C 98-00085 CRB,
C 98-00086 CRB, C 98-00087 CRB, C 98-00088 CRB,
CRB, C 98-00245 CRB

1 2. I am 56 years old. I suffer from several different conditions and
2 injuries which cause me significant and constant pain. I use cannabis for several of
3 these conditions: congenital scoliosis, fibromyalgia and cervical nerve damage that I
4 suffered as a result of being involved in several car accidents in which I was rear-
5 ended. These conditions, which include cervical nerve damage in C4 through C7 of
6 my spine, cause me enormous pain in my back. This pain is marked by frequent
7 muscle spasms and a recurring shooting pain in my head. Cannabis is the only drug
8 in my experience that has effectively treated this pain.

9 3. I have tried numerous traditional medicines for these conditions, none of
10 which was effective. For example, I took steroids and anti-inflammatory drugs. These
11 drugs have caused me to bleed internally.

12 4. I have also tried rhizotomy, which is a laser treatment. During this
13 treatment, a laser beam was burned into the cervical nerves to create scar tissue. The
14 treatment required that I be awake during it and it was excruciatingly painful. It is my
15 understanding that physicians have now discontinued prescribing rhizotomy treatments
16 because they are unbearably painful and useless. The rhizotomy treatments did not
17 relieve my back pain. This pain feels like a hot burning pain going down my left arm
18 into my hand.

19 5. In addition, I underwent breast reduction surgery to relieve the scoliosis
20 pain in my back. I also tried many different forms of physical therapy, including various
21 exercises, ultrasound, ice packs, jacuzzi treatments and others. None of these even
22 touched the recurring shooting pain I experience in my head.

23 6. I also have a therapeutic electrical neuro-stimulator (a "TENS") unit that
24 controls some of my pain from the cervical nerve damage and scoliosis. However, the
25 TENS unit does not stop or dull in any way the shooting pain that occurs in my head at
26 frequent intervals. I am presently taking morphine as prescribed by my doctor, but it--like
27 the TENS unit--does not stop or dull in any way the frequent pain in my head.

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-2-

Carter Decl. re Req. for Stay, Case Nos. C 98-00085 CRB,
C 98-00086 CRB, C 98-00087 CRB, C 98-00088 CRB,
CRB, C 98-00245 CRB

ER 1830

1 7. Cannabis is the only drug that I have used that has dulled or stopped the
2 pain. I was once forced to go without cannabis. During this period of time, the pain was
3 completely disabling and prevented me from being able to function. During this time, I
4 could not leave my bedroom due to the pain that recurred every few minutes, and
5 therefore I could not do any of my regular daily activities, such as answering the phone,
6 doing the dishes, running errands, watching television, reading and taking care of my
7 finances.

8 8. I use cannabis on the written recommendation of my doctor.

9 9. If the Oakland Coop is closed, I have no other way to obtain cannabis,
10 either legally or illegally. Cannabis is the only effective treatment available to
11 alleviate my pain and frequent muscle spasms associated with congenital scoliosis,
12 fibromyalgia and nerve damage.

13 10. As described above, I have previously gone without using cannabis. If I
14 am not able to obtain cannabis, I will again experience pain that is so debilitating that
15 I will have to return to my room and be unable to leave. Without cannabis, I
16 experience intense intervals of pain in my head that occur every few minutes. This
17 pain makes it impossible for me to spend any time with anyone, including my
18 husband. I cannot stand the thought of having to endure this pain again. Just
19 knowing that the Oakland Coop may be shut down has caused me incredible fear and
20 anxiety because I do now know how I will endure the pain I know will occur when I
21 have no cannabis to use. If there were anything in the world I could do to relieve this
22 pain other than using cannabis, I would do it. I have tried every other possible way to
23 relieve my pain that I know of, and there is no alternative for me but to use cannabis.
24 There is no drug other than cannabis that alleviates these shooting pains. I have tried
25 many traditional drugs, including morphine, steroids, rhizotomy treatments and breast
26 reduction surgery, none of which has alleviated the shooting pains.

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-3-

Carter Decl. re Req. for Stay, Case Nos. C 98-00085 CRB,
C 98-00086 CRB, C 98-00087 CRB, C 98-00088 CRB,
CRB, C 98-00245 CRB


ER 1831

1 11. If the Oakland Coop is shut down, I will not be able to obtain cannabis
2 and I will suffer immediate and imminent harm. For the reasons described above,
3 using cannabis is a medical necessity for me.

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

5 Executed this 15th day of October 1998 at Richmond, California.

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Ima Carter

Docket No. C 98-00085 CRB
C 98-00086 CRB
C 98-00087 CRB
C 98-00088 CRB
C 98-00245 CRB

PROOF OF SERVICE BY MAIL

I, Elaine M. Simmons, hereby declare:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Madison & Sutro LLP in San Francisco, California.

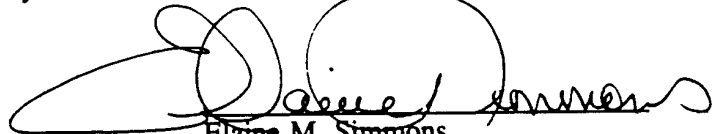
2. My business address is 235 Montgomery Street, San Francisco, California. My mailing address is P.O. Box 7880, San Francisco, California 94120-7880.

3. On October 16, 1998, I served a true copy of the document titled exactly **DECLARATION OF IMA CARTER IN SUPPORT OF REQUEST FOR STAY OF MODIFICATION TO PRELIMINARY INJUNCTION** by placing the document in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:

[See Attached Service List]

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

Executed this 16th day of October, 1998, at San Francisco, California.


Elaine M. Simmons

Service List

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William G. Panzer, Esq.
370 Grand Avenue, Suite 3
Oakland, California 94610
(510) 834-1892 Telephone
(510) 834-0418 Facsimile

Attorneys for Defendants
Marin Alliance for Medical Marijuana, et al.

Susan B. Jordan, Esq.
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9 UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO HEADQUARTERS

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 CANNABIS CULTIVATOR'S CLUB;)
15 and DENNIS PERON,)
16 Defendants.)

Nos. C 98-0085 CRB RELATED
C 98-0086 CRB
C 98-0087 CRB
C 98-0088 CRB
C 98-0245 CRB

PLAINTIFFS OPPOSITION TO
OAKLAND DEFENDANTS' EX PARTE
MOTIONS IN CASE NO. C 98-0088 CRB

17 AND RELATED ACTIONS)
18

Date: None set
Time: None set
Courtroom of the Hon. Charles R. Breyer

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27 Plaintiff's Opposition to Oakland Defendants'
Ex Parte Motions in Case No. C 98-0088 CRB
28 Case No. C 98-0088 CRB

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STATEMENT

Plaintiff, the United States of America, opposes the ex parte motions of defendants Oakland Cannabis Buyers' Cooperative ("OCBC") and Jeffrey Jones (collectively the "OCBC defendants"). The OCBC defendants have not met the rigorous standard applicable to a stay pending appeal established by the Supreme Court in Hilton v. Braunskill, 481 U.S. 770 (1987), and, consequently, there is no basis for a stay of this Court's October 13, 1998 Order Modifying Injunction in Case No. C 98-0088 ("Modification Order"). Nor is there any merit to the OCBC defendants' ex parte motion to modify the Modification Order. Accordingly, the Court should deny each of the OCBC defendants' ex parte motions.

ARGUMENT

I. THE OCBC DEFENDANTS ARE NOT ENTITLED TO A STAY OF THE COURT'S MODIFICATION ORDER

In Hilton v. Braunskill, 481 U.S. 770 (1987), the Supreme Court established that, whether under either Fed. R. Civ. P. 62(a) or Fed. R. App. P. 8(a), a court considering a motion for a stay pending appeal must consider the following factors:

(1) whether the stay applicant has made a *strong showing* that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 776 (emphasis supplied). A careful review of these factors reveals that none warrant granting of the OCBC defendants' motion for a stay pending appeal or, in the alternative, until the Ninth Circuit rules on an emergency motion for a stay.

First and foremost, the OCBC defendants have not made, and cannot make, the "strong showing" of likelihood of success on the merits required by the Supreme Court in Hilton. Indeed, in their moving papers, the OCBC defendants do not contend that they have made such a showing. Instead, they argue that, because the balance of hardships allegedly tips in their favor, "[t]he mere fact that the appeal raises serious legal questions is sufficient reason for this Court to grant the stay." Ex Parte Motions at 4. This argument is without foundation.

1 Preliminarily, even assuming that the more lenient "serious questions" standard is
2 consistent with the test outlined by the Supreme Court in Hilton, the OCBC defendants are wrong
3 in asserting that this standard may be applied in this case. As the Second Circuit has recognized:
4 [W]here the moving party seeks to stay government action taken in the public interest
5 pursuant to a statutory or regulatory scheme, the district court should not apply the less
6 rigorous fair-grounds-for-litigation standard and should not grant the injunction unless the
moving party establishes, *along with irreparably injury, a likelihood that he will succeed*
on the merits of his claim.

7 DeSario v. Thomas, 139 F.3d 80, 88 (2d Cir. 1988) (emphasis in original) (quoting Able v. United
8 States, 44 F.3d 128, 131 (2d Cir. 1995)). This is just such a case. The OCBC defendants' request
9 for a stay, if granted, would stay not only implementation of the Court's Modification Order but,
10 in addition, implementation of the Controlled Substances Act as applied to their conduct. Nor can
11 there be any doubt that implementation of the Controlled Substances Act is in the public interest.
12 In Federal Trade Comm'n v. World Wide Factors, Inc., 882 F.2d 344 (9th Cir. 1989), the Ninth
13 Circuit stated that, in statutory enforcement actions, "[h]arm to the public interest is presumed."
14 Id. at 346 (citing United States v. Odessa Union Warehouse Co-op, 833 F.2d 172, 175-76 (9th
15 Cir. 1987)). Consequently, there is no merit to the OCBC defendants' assertion that they need not
16 make a "strong showing" of likelihood of success on the merits in order to be entitled to a stay.

17 The OCBC defendants' assertion that the balance of hardships weighs in their favor also is
18 in error. In considering the balance of hardships, the Ninth Circuit has indicated that "the district
19 court must consider the public interest as a factor in balancing the hardships when the public
20 interest may be affected." Caribbean Marine Services Co. v. Baldridge, 844 F.2d 668, 674 (9th
21 Cir. 1988). Here again, because this action is a statutory enforcement action, and because,
22 therefore, "[h]arm to the public interest is presumed," World Wide Factors, Inc., 882 F.2d at 346,
23 the balance of hardships weighs against the OCBC defendants' request for a stay.

24 In addition, any further delay in enforcing this Court's Preliminary Injunction would, by
25 necessity, also be a delay in the implementation of the Controlled Substances Act with respect to
26 the OCBC defendants' conduct. This factor, too, weighs against the OCBC defendants' request

1 for a stay. "[A] temporary injunction against enforcement is in reality a suspension of an act,
2 delaying the date selected by Congress to put its chosen policies into effect. Thus judicial power
3 to stay an act of Congress, like judicial power to hold that act unconstitutional, is an awesome
4 responsibility calling for the utmost circumspection in its exercise." Heart of Atlanta Motel v.
5 United States, 85 S. Ct. 1, 2 (1964) (Black, Circuit Justice). An Act of Congress is
6 "presumptively constitutional," and this "presumption of constitutionality . . . [is] an equity to be
7 considered in favor of [the government] in balancing hardships." Walters v. National Ass'n of
8 Radiation Survivors, 468 U.S. 1323, 1324 (1984) (Rehnquist, Circuit Justice). Therefore, the
9 challenged statute should "remain in effect pending a final decision on the merits by this Court."
10 Turner Broadcasting Sys. v. FCC, 113 S. Ct. 1806, 1807 (1993) (Rehnquist, Circuit Justice).

11 Nor is there is any merit to the OCBC defendants' argument that they have established
12 irreparable injury. As this Court has already concluded, because the United States has
13 demonstrated that it is likely to succeed on the merits of this case, irreparable harm to the
14 government is presumed. United States v. Cannabis Cultivators Club, 5 F. Supp.2d 1086, 1103
15 (N.D. Cal. 1998). This determination forecloses any argument by the OCBC defendants to the
16 contrary.

17 Accordingly, because the OCBC defendants have failed to meet any of the criteria for a
18 stay, their request for a stay pending appeal or, in the alternative, until the Ninth Circuit considers
19 an emergency request should be denied.

20 **II. THERE IS NO MERIT TO THE OCBC DEFENDANT'S REQUEST FOR A**
21 **MODIFICATION OF THE MODIFICATION ORDER**

22 The OCBC defendants also seek modification of the Modification Order to allow them to
23 distribute marijuana to persons with a medical necessity. This is nothing more than a
24 reformulation of the defendants' medical necessity argument that has now been twice rejected by
25 this Court. Critically, the OCBC defendants' request would allow any person to obtain marijuana
26 if a doctor certifies that that person meets the criteria governing the necessity defense. But it is

1 not for an individual doctor to determine whether or not the OCBC defendants may continue to
2 violate federal law. As the Ninth Circuit established in United States v. Aguilar, 883 F.2d 662
3 (9th Cir. 1989), such a procedure would "establish only [defendants'] *deliberative assessment* that
4 certain [persons] faced imminent harm, and not that these [persons] in fact were in danger. * * *
5 The executive branch, not [defendants], is assigned this task." Id. at 693 n.28. Indeed, there is
6 nothing in the OCBC defendants' proposed modification which would prohibit Dr. Alcalay, for
7 example, from certifying that each and every customer of the OCBC met the criteria for the
8 necessity defense. Hence, the Court should deny the OCBC defendants' requested modification of
9 the Modification Order.

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CONCLUSION

For the reasons set forth above, the Court should deny each of the OCBC defendant's ex parte motions.

Respectfully submitted,

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Dated: October 16, 1998

CERTIFICATE OF SERVICE

1
2 I, Mark T. Quinlivan, hereby certify that on this 16th day of October, 1998, I caused to be
3 served a copy of the foregoing Plaintiff's Opposition to Oakland Defendants' Ex Parte Motions in
4 Case No. C 98-0088 CRB, and the accompanying [Proposed] Order, upon counsel for the
5 defendants and intervenors, by the following means:

6
7 By facsimile transmission and overnight delivery:

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18 Santa Clara, CA 95053

18 and by first-class mail, postage prepaid:

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22 Cannabis Cultivators Club; Dennis Peron

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27 Plaintiff's Opposition to Oakland Defendants'
28 Ex Parte Motions in Case No. C 98-0088 CRB
Case No. C 98-0088 CRB

ER 1842

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Plaintiff's Opposition to Oakland Defendants'
Ex Parte Motions in Case No. C 98-0088 CRB
Case No. C 98-0088 CRB

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FILED

OCT 16 1998

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES,

Plaintiff,

v.

CANNABIS CULTIVATORS CLUB, et al.,

Defendants.

No. C 98-00085 CRB
C 98-00086 CRB
C 98-00087 CRB
C 98-00088 CRB
C 98-00245 CRB

ORDER IN CASE NO. 98-00088
(Oakland Cannabis Buyers'
Cooperative)

and Related Cases.

On October 13, 1998, the Court issued a Memorandum and Order modifying the preliminary injunction order issued on May 19, 1998 ("the October 13th Order"). The Court stayed the October 13th Order until 5:00 p.m. today. Now before the Court is defendants' ex parte application for a further stay pending appeal and for modification of the preliminary injunction order.

Good cause appearing therefore, defendants' request that the Court continue the stay of the October 13, 1998 Order to permit defendants to file an emergency request for a stay in the Ninth Circuit Court of Appeals is GRANTED. The Court hereby STAYS the October 13th Order until 5:00 p.m. Monday, October 19, 1998, provided defendants file their request for an emergency stay with the Ninth Circuit Court of Appeals by the close of business today, Friday, October 16, 1998. All further requests for a stay must be directed to the Ninth Circuit Court of Appeals.

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Defendants' request for a stay pending resolution of their appeal is DENIED.
Defendants' request to modify the preliminary injunction is also DENIED.

IT IS SO ORDERED.

Dated: October 16, 1998



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

RELATE PROTO
APPEAL

U.S. District Court
U.S. District for the Northern District of California (S.F.)

CIVIL DOCKET FOR CASE #: 98-CV-88

USA v. Oakland Cannabis, et al
Assigned to: Judge Charles R. Breyer
Demand: \$0,000
Lead Docket: 98-CV-85
Dkt# in other court: None

Filed: 01/09/98
Jury demand: Defendant
Nature of Suit: 890
Jurisdiction: US Plaintiff

Cause: 28:1331 Fed. Question

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Docket as of November 3, 1998 12:31 pm

Page 2

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Proceedings include all events.
3:98cv88 USA v. Oakland Cannabis, et al

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Proceedings include all events.
3:98cv88 USA v. Oakland Cannabis, et al

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Proceedings include all events.
3:98cv88

USA v. Oakland Cannabis, et al

RELATE

PROTO
APPEAL

1/9/98 1 COMPLAINT (Summons Issued) Fee status exempt/U.S. Government entered on 1/9/98 [3:98-cv-00088] (tn) [3:98cv88]

1/9/98 2 ORDER RE COURT PROCEDURE and SCHEDULE by Judge Charles A. Legge: Proof of service to be filed by 2/23/98; counsels' case management statement to be filed by 5/5/98; and initial case management conference will be held at 11:00 a.m. on 5/15/98 (cc: all counsel) (tn) [3:98cv88]

1/9/98 3 MOTION WITH MEMORANDUM before Judge Charles A. Legge by Plaintiff for preliminary injunction, for permanent injunction, and for summary judgment with Notice set for 9:30 a.m. on 2/20/98 [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

1/9/98 4 DECLARATION of Special Agent Bill Nyfeler on behalf of Plaintiff in support of its motion for preliminary injunction [3-1], for permanent injunction [3-2], and for summary judgment [3-3] [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

1/9/98 5 DECLARATION of Special Agent Brian Nehring on behalf of Plaintiff re motion for preliminary injunction [3-1], for permanent injunction [3-2], and for summary judgment [3-3] [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

1/9/98 6 DECLARATION of Special Agent Carolyn Porra on behalf of Plaintiff re motion for preliminary injunction [3-1], for permanent injunction [3-2], and for summary judgment [3-3] [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

1/9/98 7 DECLARATION of Special Agent Deborah Muuse on behalf of Plaintiff re motion for preliminary injunction [3-1], for permanent injunction [3-2], and for summary judgment [3-3] [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

1/9/98 8 DECLARATION of Phyllis E. Quinn on behalf of Plaintiff re motion for preliminary injunction [3-1], for permanent injunction [3-2], and for summary judgment [3-3] [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

1/9/98 9 DECLARATION of Special Agent Mark Nelson on behalf of Plaintiff re motion for preliminary injunction [3-1], for permanent injunction [3-2], and for summary judgment [3-3] [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

1/9/98 10 DECLARATION of Mark T. Quinlivan on behalf of Plaintiff re motion for preliminary injunction [3-1], for permanent injunction [3-2], and for summary judgment [3-3] [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

1/9/98 -- RECEIVED [Proposed] Judgment and Order (Plaintiff) [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]

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RELATE
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APPEAL

- 1/9/98 11 NOTICE by Plaintiff of related case(s) C-98-0085-CRB, C-98-0086-VRW, C-98-0087-TEH, C-98-0089-CW, C-98-20013 EAI [3:98-cv-00088] (tn) [Entry date 01/13/98] [3:98cv88]
- 1/22/98 12 ORDER by Judge Charles R. Breyer granting related case notice [11-1], and relating case to C-98-0085-CRB, C-98-0086-CRB, C-98-0087-CRB & C-98-0089-CRB, and Case reassigned to Judge Charles R. Breyer (cc: all counsel) [3:98-cv-00088] (tn) [Entry date 01/30/98] [3:98cv88]
- 1/26/98 13 EX-PARTE APPLICATION before Judge Charles R. Breyer by defendants in 3:98-cv-00088 to shorten time on hearing of defendants' motion for continuance and request for status and setting conference [3:98-cv-00088] (mcl) [Entry date 02/02/98] [3:98cv88]
- 1/26/98 14 MOTION WITH MEMORANDUM OF POINTS AND AUTHORITIES before Judge Charles R. Breyer by defendants in 3:98-cv-00088 for continuance ; request for status and setting conference [3:98-cv-00088] (mcl) [Entry date 02/02/98] [3:98cv88]
- 1/26/98 15 DECLARATION by William G. Panzer on behalf of defendants in 3:98-cv-00088 re motion for continuance ; request for status and setting conference [14-1] [3:98-cv-00088] (mcl) [Entry date 02/02/98] [3:98cv88]
- 1/26/98 16 EX-PARTE APPLICATION before Judge Charles R. Breyer by defendants in 3:98-cv-00088 for order enlarging time to file responsive pleading [3:98-cv-00088] (mcl) [Entry date 02/02/98] [3:98cv88]
- 1/26/98 17 DECLARATION by William G. Panzer on behalf of defendants in 3:98-cv-00088 re motion for order enlarging time to file responsive pleading [16-1] [3:98-cv-00088] (mcl) [Entry date 02/02/98] [3:98cv88]
- 1/26/98 18 PROOF OF SERVICE by defendants in 3:98-cv-00088 of declaration [17-1], motion for order enlarging time to file responsive pleading [16-1], declaration [15-1], motion for continuance ; request for status and setting conference [14-1], motion to shorten time on hearing of defendants' motion for continuance and request for status and setting conference [13-1] [3:98-cv-00088] (mcl) [Entry date 02/02/98] [3:98cv88]

Proceedings include all events.
3:98cv88

USA v. Oakland Cannabis, et al

RELATE
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APPEAL

- 1/28/98 19 OPPOSITION by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00088 to motion for continuance ; Request for status and setting conference [15-1] in 3:98-cv-00085, motion for continuance ; request for status and setting conference [13-1] in 3:98-cv-00086, motion for continuance ; request for status and setting conference [14-1] in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00088] (mcl) [Entry date 02/03/98] [3:98cv85 3:98cv86 3:98cv88]
- 1/28/98 20 DECLARATION by Mark T. Quinlivan on behalf of Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00088, 3:98-cv-00089] (mcl) [Entry date 02/03/98] [3:98cv85 3:98cv86 3:98cv88 3:98cv89]
- 1/28/98 -- RECEIVED Proposed Order (Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089) DENYING motion for continuance ; Request for status and setting conference [15-1] in 3:98-cv-00085, DENYING motion for continuance ; request for status and setting conference [13-1] in 3:98-cv-00086, DENYING motion for continuance.; request for status and setting conference [14-1] in 3:98-cv-00088, DENYING motion for continuance ; request for status and setting conference [14-1] in 3:98-cv-00089 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00088, 3:98-cv-00089] (mcl) [Entry date 02/03/98] [3:98cv85 3:98cv86 3:98cv88 3:98cv89]
- 1/30/98 21 MINUTES: (C/R Jo Ann Bryce) (Hearing Date: 1/30/98) granting defendants' motion for continuance ; request for status and setting conference [14-1], vacating hearing re plaintiff's motion for preliminary injunction [3-1], vacating hearing re plaintiff's motion for permanent injunction [3-2], vacating hearing re plaintiff's motion for summary judgment [3-3] All motions will be heard by 2:30 3/24/98 ; defendant to file opposition by 2/27/98, government to file reply by 3/13/98 [3:98-cv-00088] (mcl) [Entry date 02/04/98] [3:98cv88]

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ORDER by Judge Charles R. Breyer setting hearing on plaintiff's motion for preliminary and permanent injunction [3-1] in 3:98-cv-00085 2:30 3/24/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, setting hearing on plaintiff's motion for preliminary injunction and permanent injunction [4-1] in 3:98-cv-00086 2:30 3/24/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, setting hearing on plaintiff's motion for preliminary and permanent injunction [3-1] in 3:98-cv-00087 2:30 3/24/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, setting hearing on plaintiff's motion for preliminary injunction [3-1] in 3:98-cv-00088 2:30 3/24/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, setting hearing on plaintiff's motion for preliminary injunction and permanent injunction [3-1] in 3:98-cv-00089 2:30 3/24/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089 ; defendants shall file their answers to the complaints by 2/27/98, defendants' memoranda in opposition to plaintiff's motions filing ddl 2/27/98, plaintiff's reply memorandum filing ddl 3/13/98 (Date Entered: 2/11/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089] (mcl) [Entry date 02/11/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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REQUEST by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089 for waiver of page limits. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089] (mcl) [Entry date 03/03/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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JOINT MEMORANDUM OF POINTS AND AUTHORITIES by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089 in opposition to motion for preliminary and permanent injunction [3-1] in 3:98-cv-00085, motion for preliminary injunction and permanent injunction [4-1] in 3:98-cv-00086, motion for preliminary and permanent injunction [3-1] in 3:98-cv-00087, motion for preliminary injunction [3-1] in 3:98-cv-00088, motion for preliminary injunction and permanent injunction [3-1] in 3:98-cv-00089 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089] (mcl) [Entry date 03/03/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 2/27/98 25 JOINT NOTICE OF MOTION AND MOTION before Judge Charles R. Breyer by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089 to dismiss for lack of jurisdiction with Notice set for 3/24/98 at 2:30 pm [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089] (mcl) [Entry date 03/03/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 2/27/98 26 MEMORANDUM of points and authorities by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089 in support of motion to dismiss for lack of jurisdiction [28-1] in 3:98-cv-00085, of motion to dismiss for lack of jurisdiction [25-1] in 3:98-cv-00086, of motion to dismiss for lack of jurisdiction [18-1] in 3:98-cv-00087, of motion to dismiss for lack of jurisdiction [25-1] in 3:98-cv-00088, of motion to dismiss for lack of jurisdiction [28-1] in 3:98-cv-00089 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089] (mcl) [Entry date 03/03/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 2/27/98 27 MEMORANDUM of points and authorities by defendant John Hudson in 3:98-cv-00089 in response to the issue presented by the Court. [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088] (mcl) [Entry date 03/03/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 2/27/98 28 MEMORANDUM OF POINTS AND AUTHORITIES by defendant Flower Therapy in 3:98-cv-00089 in response to the issue presented by the Court. [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088] (mcl) [Entry date 03/03/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 2/27/98 29 MEMORANDUM OF POINTS AND AUTHORITIES by defendant Barbara Sweeney in 3:98-cv-00089 in response to the issue presented by the Court. [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088] (mcl) [Entry date 03/03/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 2/27/98 30 JOINDER by defendant Flower Therapy in 3:98-cv-00089, defendant John Hudson in 3:98-cv-00089, defendant Barbara Sweeney in 3:98-cv-00089 in memoranda of other defendants. [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088] (mcl) [Entry date 03/03/98] [3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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3:98cv88 USA v. Oakland Cannabis, et al

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- 3/13/98 31 EX-PARTE APPLICATION before Judge Charles R. Breyer by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089, defendant in 3:98-cv-00245 to shorten time on defendants' motion to dismiss under the doctrine of abstention [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 03/17/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 3/13/98 32 MEMORANDUM of points and authorities by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089, defendant in 3:98-cv-00245 in support of motion to dismiss under the doctrine of abstention. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 03/17/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 3/13/98 33 DECLARATION by Brendan Cummings on behalf of defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089, defendant in 3:98-cv-00245 in support of motion to dismiss under the doctrine of abstention [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 03/17/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 3/13/98 35 CONSOLIDATED REPLY by Plaintiff in 3:98-cv-00085, Plaintiff in 3:98-cv-00086, Plaintiff in 3:98-cv-00087, Plaintiff in 3:98-cv-00088, Plaintiff in 3:98-cv-00089, Plaintiff in 3:98-cv-00245 to opposition to motion for preliminary and permanent injunction [3-1] in 3:98-cv-00085, motion for preliminary injunction and permanent injunction [4-1] in 3:98-cv-00086, motion for preliminary and permanent injunction [3-1] in 3:98-cv-00087, motion for preliminary injunction [3-1] in 3:98-cv-00088, motion for preliminary injunction and permanent injunction [3-1] in 3:98-cv-00089, motion for preliminary and permanent injunction, and for summary judgment [3-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 03/17/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 3/13/98 35 OPPOSITION by Plaintiff in 3:98-cv-00085, Plaintiff in 3:98-cv-00086, Plaintiff in 3:98-cv-00087, Plaintiff in 3:98-cv-00088, Plaintiff in 3:98-cv-00089, Plaintiff in 3:98-cv-00245 to motion to dismiss for lack of jurisdiction [28-1] in 3:98-cv-00085, motion to dismiss for lack of jurisdiction [25-1] in 3:98-cv-00086, motion to dismiss for lack of jurisdiction [18-1] in 3:98-cv-00087, motion to dismiss for lack of jurisdiction [25-1] in 3:98-cv-00088, motion to dismiss for lack of jurisdiction [28-1] in 3:98-cv-00089, motion to dismiss for lack of jurisdiction [22-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 03/17/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 3/16/98 34 ORDER by Judge Charles R. Breyer denying motion to shorten time on defendants' motion to dismiss under the doctrine of abstention [34-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245. At the hearing on 3/24/98, the Court intends to discuss with the parties how the Court and the parties should address the abstention issue raised by defendants' motion. (Date Entered: 3/17/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 03/17/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 3/17/98 36 ORDER by Judge Charles R. Breyer allowing the filing of an amicus brief by City & County of SF to case(s) 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245. (Date Entered: 3/18/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 03/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 3/17/98 37 AMICUS BRIEF FILED by Amicus Curiae City & County of SF in 3:98-cv-00085, Amicus Curiae City & County of SF in 3:98-cv-00086, Amicus Curiae City & County of SF in 3:98-cv-00087, Amicus Curiae City & County of SF in 3:98-cv-00088, Amicus Curiae City & County of SF in 3:98-cv-00089, Amicus Curiae City & County of SF in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 03/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 3/19/98 38 STATEMENT of recent decision by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245]

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(mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88
3:98cv89]

- 3/20/98 39 JOINDER by City of Oakland re brief [41-1] in
3:98-cv-00085, re brief [37-1] in 3:98-cv-00086, re brief
[30-1] in 3:98-cv-00087, re brief [37-1] in 3:98-cv-00088,
re brief [40-1] in 3:98-cv-00089, re brief [34-1] in
3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl)
[Entry date 03/23/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87
3:98cv88 3:98cv89]
- 3/24/98 40 JOINT STIPULATION of dismissal without prejudice as to
defendant Gerald L. Buhrz [3:98-cv-00085, 3:98-cv-00086,
3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245]
(mcl) [Entry date 03/25/98] [3:98cv245 3:98cv85 3:98cv86
3:98cv87 3:98cv88 3:98cv89]
- 3/24/98 41 MINUTES: (C/R Kathy Wyatt) (Hearing Date: 3/24/98) that
defendants' motion to dismiss for lack of jurisdiction
[25-1] is submitted, that plaintiff's motion for
preliminary injunction [3-1] is submitted ; Court is
allowing counsel to file supplemental briefs on new issues
raised in Court not to exceed 50 pages by 4/16/98 ; Court
will allow the City of Fairfax to file amicus briefs.
[3:98-cv-00088] (mcl) [Entry date 03/26/98] [3:98cv88]
- 3/31/98 42 REPORTER'S TRANSCRIPT; Date of proceedings: 3/24/98 (C/R:
Katherine Pope Wyatt) [3:98-cv-00085, 3:98-cv-00086,
3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245]
(mcl) [Entry date 04/02/98] [3:98cv245 3:98cv85 3:98cv86
3:98cv87 3:98cv88 3:98cv89]
- 4/14/98 43 MOTION before Judge Charles R. Breyer by Amicus Curiae
City & County of SF in 3:98-cv-00085, Amicus Curiae City &
County of SF in 3:98-cv-00086, Amicus Curiae City & County
of SF in 3:98-cv-00087, Amicus Curiae City & County of SF
in 3:98-cv-00088, Amicus Curiae City & County of SF in
3:98-cv-00089, Amicus Curiae City & County of SF in
3:98-cv-00245 to file addendum to brief amici curiae
[3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl)
[3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 4/15/98 44 EXHIBITS by City of Oakland re brief [41-1] in
3:98-cv-00085, re brief [37-1] in 3:98-cv-00086, re brief
[30-1] in 3:98-cv-00087, re brief [37-1] in 3:98-cv-00088,
re brief [40-1] in 3:98-cv-00089, re brief [34-1] in
3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl)
[Entry date 04/17/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87
3:98cv88 3:98cv89]

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- 4/16/98 45 REQUEST FOR JUDICIAL NOTICE by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089, defendant in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 04/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 4/16/98 46 POST-HEARING MEMORANDUM by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 04/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 4/16/98 47 DECLARATION by Mark T. Quinlivan on behalf of Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 04/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 4/16/98 48 MOTION by Pebbles Trippet before Judge Charles R. Breyer for joinder &/or intervention [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 04/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 4/16/98 49 SUPPLEMENT re brief of the Town of Fairfax [46-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089 and 3:98-cv-00245. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 04/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 4/20/98 50 REQUEST by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089, defendant in 3:98-cv-00245 to file addendum to defendants' joint memorandum nunc pro tunc. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 04/22/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 4/20/98 51 ADDENDUM filed by defendant in 3:98-cv-00085, defendant in 3:98-cv-00086, defendant in 3:98-cv-00087, defendant in 3:98-cv-00088, defendant in 3:98-cv-00089, defendant in 3:98-cv-00245 to opposition memorandum [27-1] in 3:98-cv-00085 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl)

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[Entry date 04/22/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87
3:98cv88 3:98cv89]

- 4/28/98 52 NOTICE by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 of change of address of counsel : Robert A. Raich, P.C., 1970 Broadway, Ste 1200, Oakland, CA 94612. Tel. no. (510) 338-0700. [3:98-cv-00088] (mcl) [Entry date 04/29/98] [3:98cv88]
- 5/4/98 53 CLERK'S NOTICE vacating initial case management conference set for 5/15/98 at 8:30 am [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 05/05/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 5/13/98 54 MEMORANDUM AND ORDER: by Judge Charles R. Breyer Attached to this Memorandum and Order is a proposed form of preliminary injunction. The parties are directed to file a written submission with this Court by noon 5/18/98 as to the form of the order. The Court will issue the preliminary injunction shortly thereafter (see document) (Date Entered: 5/14/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (scu) [Entry date 05/14/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 5/15/98 55 DECLARATION by Harold A. Sweet on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 05/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 5/15/98 56 DECLARATION by Harold A. Sweet on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re attachments. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 05/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 5/18/98 57 RESPONSE by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 re order [67-1] in 3:98-cv-00085, re order [55-1] in 3:98-cv-00086, re order [48-1] in 3:98-cv-00087, re order [54-1] in 3:98-cv-00088, re order [57-1] in 3:98-cv-00089, re order [51-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 05/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 5/18/98 58 DECLARATION by Mark T. Quinlivan on behalf of Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 05/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 5/18/98 -- RECEIVED Suggestions re proposed preliminary injunction Order (Pebbles Trippet) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 05/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 5/18/98 61 SUBMISSION by defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086, defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re proposed Order for preliminary injunction [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 05/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 5/19/98 59 ORDER by Judge Charles R. Breyer denying defendants' motion to dismiss for lack of jurisdiction [28-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, denying defendants' motion to dismiss for lack of jurisdiction [22-1] in 3:98-cv-00245. Defendants must file their answers to the complaints in the above actions within 30 days of the date of this Order. Defendants Flower Therapy Medical Marijuana Club, John Hudson, Mary Palmer and Barbara Sweeney shall re-file their ex-parte motion to dismiss in accordance with Local Rule 7-2 (Date Entered: 5/19/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 5/19/98 60 ORDER by Judge Charles R. Breyer for preliminary injunction. Defendants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones are hereby preliminarily enjoined from engaging in the manufacture or distribution of marijuana... enjoined from using the premises at 1755 Broadway, Oakland, California for the purposes of engaging in the manufacture and distribution of marijuana ... (see Order) (Date Entered: 5/19/98) (cc: all counsel) [3:98-cv-00088] (mcl) [Entry date 05/20/98] [3:98cv88]
- 6/1/98 62 RETURN OF SERVICE of preliminary injunction order executed upon defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 on 5/29/98 [3:98-cv-00088] (mcl) [Entry date 06/02/98] [3:98cv88]

Proceedings include all events.
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- 6/17/98 63 RESPONSE from Harold Sweet to preliminary injunction order. [3:98-cv-00088] (mcl) [Entry date 06/18/98] [3:98cv88]
- 6/18/98 64 ANSWER by defendant Ukiah Cannabis Buyer in 3:98-cv-00087, defendant Cherrie Lovett in 3:98-cv-00087, defendant Marvin Lehrman in 3:98-cv-00087, defendant Mildred Lehrman in 3:98-cv-00087 to complaint [1-1] in 3:98-cv-00085, complaint [1-1] in 3:98-cv-00086, complaint [1-1] in 3:98-cv-00087, complaint [1-1] in 3:98-cv-00088, complaint [1-1] in 3:98-cv-00089, complaint [1-1] in 3:98-cv-00245; jury demand [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 6/18/98 65 ANSWER by defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086 to complaint [1-1] in 3:98-cv-00085, complaint [1-1] in 3:98-cv-00086, complaint [1-1] in 3:98-cv-00087, complaint [1-1] in 3:98-cv-00088, complaint [1-1] in 3:98-cv-00089, complaint [1-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 6/18/98 66 ANSWER by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to complaint [1-1] in 3:98-cv-00085, complaint [1-1] in 3:98-cv-00086, complaint [1-1] in 3:98-cv-00087, complaint [1-1] in 3:98-cv-00088, complaint [1-1] in 3:98-cv-00089, complaint [1-1] in 3:98-cv-00245; jury demand [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 6/18/98 67 NOTICE OF MOTION AND MOTION before Judge Charles R. Breyer by defendant Flower Therapy, defendant John Hudson, defendant Barbara Sweeney in 3:98-cv-00089 to dismiss case with Notice set for 7/31/98 at 10:00 am [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 6/18/98 68 MEMORANDUM of points and authorities by defendant Flower Therapy in 3:98-cv-00089 in support of motion to dismiss case [70-1] in 3:98-cv-00089, of motion to dismiss case [80-1] in 3:98-cv-00085, of motion to dismiss case [67-1] in 3:98-cv-00086, of motion to dismiss case [60-1] in 3:98-cv-00087, of motion to dismiss case [67-1] in 3:98-cv-00088, of motion to dismiss case [63-1] in 3:98-cv-00245 [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87

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- 6/18/98 -- RECEIVED Proposed Order (defendant Flower Therapy in 3:98-cv-00089, defendant John Hudson in 3:98-cv-00089, defendant Barbara Sweeney in 3:98-cv-00089) re: motion to dismiss case [70-1] in 3:98-cv-00089, re: motion to dismiss case [80-1] in 3:98-cv-00085, re: motion to dismiss case [67-1] in 3:98-cv-00086, re: motion to dismiss case [60-1] in 3:98-cv-00087, re: motion to dismiss case [67-1] in 3:98-cv-00088, re: motion to dismiss case [63-1] in 3:98-cv-00245 [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 6/18/98 69 PROOF OF SERVICE by defendant Flower Therapy in 3:98-cv-00089, defendant John Hudson in 3:98-cv-00089, defendant Barbara Sweeney in 3:98-cv-00089 of memorandum [71-1] in 3:98-cv-00089, motion to dismiss case [70-1] in 3:98-cv-00089, memorandum [81-1] in 3:98-cv-00085, motion to dismiss case [80-1] in 3:98-cv-00085, memorandum [68-1] in 3:98-cv-00086, motion to dismiss case [67-1] in 3:98-cv-00086, memorandum [61-1] in 3:98-cv-00087, motion to dismiss case [60-1] in 3:98-cv-00087, memorandum [68-1] in 3:98-cv-00088, motion to dismiss case [67-1] in 3:98-cv-00088, memorandum [64-1] in 3:98-cv-00245, motion to dismiss case [63-1] in 3:98-cv-00245 [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 6/18/98 70 ANSWER by defendant Flower Therapy in 3:98-cv-00089, defendant John Hudson in 3:98-cv-00089, defendant Barbara Sweeney in 3:98-cv-00089 to complaint [1-1] in 3:98-cv-00089, complaint [1-1] in 3:98-cv-00085, complaint [1-1] in 3:98-cv-00086, complaint [1-1] in 3:98-cv-00087, complaint [1-1] in 3:98-cv-00088, complaint [1-1] in 3:98-cv-00245; jury demand [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 6/18/98 71 DECLARATION by John Hudson and Barbara Sweeney on behalf of defendant Flower Therapy in 3:98-cv-00089, defendant John Hudson in 3:98-cv-00089, defendant Barbara Sweeney in 3:98-cv-00089 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 06/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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OPPOSITION by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 to motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/14/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

7/10/98 --

RECEIVED Proposed Order (Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245) re: motion to dismiss case [80-1] in 3:98-cv-00085, re: motion to dismiss case [67-1] in 3:98-cv-00086, re: motion to dismiss case [60-1] in 3:98-cv-00087, re: motion to dismiss case [67-1] in 3:98-cv-00088, re: motion to dismiss case [70-1] in 3:98-cv-00089, re: motion to dismiss case [63-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/14/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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ORDER by Judge Charles R. Breyer setting hearing on plaintiff's motion to modify 5/19/98 preliminary injunction orders in case nos. C-98-0086, C-98-0087 and C-98-0088, C-98-0089, C-98-0245 C-98-0085 [85-1] HEARING SET FOR 1:30 8/14/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245. Defendants' responses due 7/31/98, plaintiff's reply due 8/7/98 (Date Entered: 7/14/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/14/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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NOTICE by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 of association of attorney Andrew A. Steckler, James J. Brosnahan, Johanna Roberts of Morrison & Foerster LLP. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/14/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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7/21/98 75 EX-PARTE APPLICATION before Judge Charles R. Breyer by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/23/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

7/21/98 76 DECLARATION by James J. Brosnahan on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [94-1] in 3:98-cv-00085, re motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [75-1] in 3:98-cv-00086, re motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [68-1] in 3:98-cv-00087, re motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [75-1] in 3:98-cv-00088, re motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [78-1] in 3:98-cv-00089, re motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [71-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/23/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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7/21/98 -- RECEIVED Proposed Order (defendant in 3:98-cv-00088) re: motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [78-1] in 3:98-cv-00089, re: motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [94-1] in 3:98-cv-00085, re: motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [75-1] in 3:98-cv-00086, re: motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [68-1] in 3:98-cv-00087, re: motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [75-1] in 3:98-cv-00088, re: motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [71-1] in 3:98-cv-00245 [3:98-cv-00089, 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 07/23/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

7/27/98 77 LETTER dated 7/24/98 from Andrew A. Steckler in 3:98-cv-00088 to Judge Breyer re confirmation of continuance of hearing date of plaintiff's motion for an order to show cause, and for summary judgment, and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders to 8/31/98 at 2:30 pm. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

7/27/98 -- Docket Modification (Administrative) continuing hearing on plaintiff's motion for order to show cause why non-compliant defendants should not be held in contempt, and for summary judgment [86-1] in 3:98-cv-00085 2:30 8/31/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245, continuing hearing on plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders in case nos. C-98-0086, C-98-0087 and C-98-0088 CRB [85-1] in 3:98-cv-00085 2:30 8/31/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 7/27/98 78 LETTER dated 7/27/98 from Andrew A. Steckler in 3:98-cv-00088 to Judge Breyer re revised briefing schedule : defendants' opposition due 8/14/98, plaintiff's reply due 8/24/98. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 7/27/98 79 ORDER by Judge Charles R. Breyer granting defendnats' motion to continue hearing date for plaintiff's motion to show cause and for summary judgment and plaintiff's exparte motion to modify 5/19/98 preliminary injunction orders [94-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245, continuing hearing on plaintiff's motion for order to show cause why non-compliant defendants should not be held in contempt, and for summary judgment [86-1] in 3:98-cv-00085 2:30 8/31/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245, continuing hearing on plaintiff's motion to modify 5/19/98 preliminary injunction orders in case nos. C-98-0086, C-98-0087 and C-98-0088 CRB [85-1] in 3:98-cv-00085 2:30 8/31/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245. Defendants' responses due 8/14/98, plaintiff's reply due 8/24/98 (Date Entered: 7/28/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 07/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 7/30/98 80 NOTICE by defendants in 3:98-cv-00088 of entry of order filed 7/27/98 granting defendants' motion to continue the hearing date for plaintiff's motion to show cause. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/03/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 7/30/98 81 STIPULATION and ORDER by Judge Charles R. Breyer : resetting hearing on defendants' motion to dismiss case [80-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245 2:30 8/31/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245, resetting hearing on defendants' motion to dismiss case [62-1] in 3:98-cv-00089 2:30 8/31/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245. Defendants Flower Therapy Medical Marijuana Club, John Hudson and Barbara Sweeney shall have until 8/14/98 to file a reply in support of motion to dismiss (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/03/98] [3:98cv245

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8/6/98 82 DECLARATION by Harold Sweet on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/11/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/13/98 83 EX-PARTE APPLICATION before Judge Charles R. Breyer by defendants Oakland Cannabis Buyers' and Jeffrey Jones to shorten time on motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/14/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

Proceedings include all events.
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DECLARATION by Annette P. Carnegie on behalf of defendant Cannabis Cultivators in 3:98-cv-00085, defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re motion to shorten time on motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [104-1] in 3:98-cv-00085, re motion to shorten time on motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [83-1] in 3:98-cv-00086, re motion to shorten time on motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [76-1] in 3:98-cv-00087, re motion to shorten time on motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [83-1] in 3:98-cv-00088, re motion to shorten time on motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [86-1] in 3:98-cv-00089, re motion to shorten time on motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [79-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/14/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

Proceedings include all events.

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8/13/98 -- RECEIVED Proposed Order (defendant Oakland Cannabis in
3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088)
re: motion to shorten time on motion to dismiss case [80-1]
in 3:98-cv-00085, motion to dismiss case [67-1] in
3:98-cv-00086, motion to dismiss case [60-1] in
3:98-cv-00087, motion to dismiss case [67-1] in
3:98-cv-00088, motion to dismiss case [70-1] in
3:98-cv-00089, motion to dismiss case [63-1] in
3:98-cv-00245 [104-1] in 3:98-cv-00085, re: motion to
continue hearing date for plaintiff's motion to show cause
and for summary judgment and plaintiff's ex parte motion to
modify 5/19/98 preliminary injunction orders [75-1] in
3:98-cv-00086, re: motion to continue hearing date for
plaintiff's motion to show cause and for summary judgment
and plaintiff's ex parte motion to modify 5/19/98
preliminary injunction orders [68-1] in 3:98-cv-00087, re:
motion to continue hearing date for plaintiff's motion to
show cause and for summary judgment and plaintiff's ex parte
motion to modify 5/19/98 preliminary injunction orders
[75-1] in 3:98-cv-00088, re: motion to continue hearing
date for plaintiff's motion to show cause and for summary
judgment and plaintiff's ex parte motion to modify 5/19/98
preliminary injunction orders [78-1] in 3:98-cv-00089, re:
motion to continue hearing date for plaintiff's motion to
show cause and for summary judgment and plaintiff's ex parte
motion to modify 5/19/98 preliminary injunction orders
[71-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086,
3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245]
(mcl) [Entry date 08/14/98] [3:98cv245 3:98cv85 3:98cv86
3:98cv87 3:98cv88 3:98cv89]

8/14/98 85 EX-PARTE APPLICATION by proposed defendants and
counterclaimants-in-intervention Edward Neil Brundridge,
Ima Carter, Rebecca Nikkel and Lucia Y. Vier before Judge
Charles R. Breyer to shorten time on hearing of motion for
leave to intervene; attached memorandum of points and
authorities [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl)
[Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87
3:98cv88 3:98cv89]

Proceedings include all events.
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- 8/14/98 86 DECLARATION by Margaret S. Schroeder on behalf of proposed defendants and counterclaimants-in-intervention re motion to shorten time on hearing of motion for leave to intervene [106-1] in 3:98-cv-00085, re motion to shorten time on hearing of motion for leave to intervene [85-1] in 3:98-cv-00086, re motion to shorten time on hearing of motion for leave to intervene [78-1] in 3:98-cv-00087, re motion to shorten time on hearing of motion for leave to intervene [85-1] in 3:98-cv-00088, re motion to shorten time on hearing of motion for leave to intervene [88-1] in 3:98-cv-00089, re motion to shorten time on hearing of motion for leave to intervene [81-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 -- RECEIVED Proposed Order (proposed defendants and counterclaimants-in-intervention) re: motion to shorten time on hearing of motion for leave to intervene [106-1] in 3:98-cv-00085, re: motion to shorten time on hearing of motion for leave to intervene [85-1] in 3:98-cv-00086, re: motion to shorten time on hearing of motion for leave to intervene [78-1] in 3:98-cv-00087, re: motion to shorten time on hearing of motion for leave to intervene [85-1] in 3:98-cv-00088, re: motion to shorten time on hearing of motion for leave to intervene [88-1] in 3:98-cv-00089, re: motion to shorten time on hearing of motion for leave to intervene [81-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 -- RECEIVED Motion for leave to intervene with memorandum of points and authorities and supporting papers (proposed defendants and counterclaimants-in-intervention Edward Neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 -- RECEIVED Proposed Order (proposed defendants and counterclaimants-in-intervention) granting motion for leave to intervene [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

Proceedings include all events.
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PROOF OF SERVICE by proposed defendants and counterclaimants-in-intervention of order received [0-0] in 3:98-cv-00085, document received [0-0] in 3:98-cv-00085, order received [0-0] in 3:98-cv-00085, declaration [107-1] in 3:98-cv-00085, motion to shorten time on hearing of motion for leave to intervene [106-1] in 3:98-cv-00085, order received [0-0] in 3:98-cv-00086, document received [0-0] in 3:98-cv-00086, order received [0-0] in 3:98-cv-00086, declaration [86-1] in 3:98-cv-00086, motion to shorten time on hearing of motion for leave to intervene [85-1] in 3:98-cv-00086, order received [0-0] in 3:98-cv-00087, document received [0-0] in 3:98-cv-00087, order received [0-0] in 3:98-cv-00087, declaration [79-1] in 3:98-cv-00087, motion to shorten time on hearing of motion for leave to intervene [78-1] in 3:98-cv-00087, order received [0-0] in 3:98-cv-00088, document received [0-0] in 3:98-cv-00088, order received [0-0] in 3:98-cv-00088, declaration [86-1] in 3:98-cv-00088, motion to shorten time on hearing of motion for leave to intervene [85-1] in 3:98-cv-00088, order received [0-0] in 3:98-cv-00089, document received [0-0] in 3:98-cv-00089, order received [0-0] in 3:98-cv-00089, declaration [89-1] in 3:98-cv-00089, motion to shorten time on hearing of motion for leave to intervene [88-1] in 3:98-cv-00089, order received [0-0] in 3:98-cv-00245, document received [0-0] in 3:98-cv-00245, order received [0-0] in 3:98-cv-00245, declaration [82-1] in 3:98-cv-00245, motion to shorten time on hearing of motion for leave to intervene [81-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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ORDER by Judge Charles R. Breyer granting defendants' motion to shorten time on motion to dismiss case [80-1] in 3:98-cv-00085, motion to dismiss case [67-1] in 3:98-cv-00086, motion to dismiss case [60-1] in 3:98-cv-00087, motion to dismiss case [67-1] in 3:98-cv-00088, motion to dismiss case [70-1] in 3:98-cv-00089, motion to dismiss case [63-1] in 3:98-cv-00245 [104-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245 Defendants' motions to dismiss will be heard by 2:30 8/31/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245 ; plaintiff's response due 8/24/98, reply due 8/27/98 (Date Entered: 8/18/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

Proceedings include all events.

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- 8/14/98 89 NOTICE OF MOTION AND MOTION before Judge Charles R. Breyer by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to dismiss case for failure to state a claim with Notice set for 8/31/98 at 2:30 pm [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 90 MEMORANDUM of points and authorities by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 in support of motion to dismiss case for failure to state a claim [111-1] in 3:98-cv-00085, of motion to dismiss case for failure to state a claim [89-1] in 3:98-cv-00086, of motion to dismiss case for failure to state a claim [82-1] in 3:98-cv-00087, of motion to dismiss case for failure to state a claim [89-1] in 3:98-cv-00088, of motion to dismiss case for failure to state a claim [92-1] in 3:98-cv-00089, of motion to dismiss case for failure to state a claim [85-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 91 MEMORANDUM by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 in opposition to motion for order to show cause why non-compliant defendants should not be held in contempt, and for summary judgment [86-1] in 3:98-cv-00085 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 92 MEMORANDUM by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 in opposition to motion to modify 5/19/98 preliminary injunction orders in case nos. C-98-0086, C-98-0087 and C-98-0088 CRB [85-1] in 3:98-cv-00085 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 93 OBJECTIONS TO AND MOTION before Judge Charles R. Breyer by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to strike declarations of Mark Quinlian, Bill Nyfeler, Dean Arnold and Peter Ott [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

Proceedings include all events.

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- 8/14/98 94 REQUEST FOR JUDICIAL NOTICE by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 95 DECLARATION by David Sanders on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 96 DECLARATION by John P. Morgan, M.D. on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 97 DECLARATION by Yvonne Westbrook on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 98 DECLARATION by Kenneth Estes on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 99 DECLARATION by Ima Carter on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 8/14/98 -- RECEIVED Proposed Order (defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088) re: motion to dismiss case for failure to state a claim [111-1] in 3:98-cv-00085, re: motion to dismiss case for failure to state a claim [89-1] in 3:98-cv-00086, re: motion to dismiss case for failure to state a claim [82-1] in 3:98-cv-00087, re: motion to dismiss case for failure to state a claim [89-1] in 3:98-cv-00088, re: motion to dismiss case for failure to state a claim [92-1] in 3:98-cv-00089, re: motion to dismiss case for failure to state a claim [85-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 100 ORDER by Judge Charles R. Breyer granting proposed defendants counterclaimants-in-intervention motion to shorten time on hearing of motion for leave to intervene [106-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245. motion for leave to intervene will be heard 8/31/98 at 2:30 pm ; plaintiff's opposition due 8/24/98, reply due 8/27/98 (Date Entered: 8/18/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/18/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 101 NOTICE OF MOTION AND MOTION WITH MEMORANDUM OF POINTS AND AUTHORITIES by proposed defendants and counterclaimants-in-intervention Edward Neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier before Judge Charles R. Breyer for leave to intervene with Notice set for 8/31/98 at 2:30 pm [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/14/98 102 DECLARATION by Ima Carter on behalf of proposed defendant and counterclaimant-in-intervention Edward Neil Brundridge and Ima Carter re motion for leave to intervene [101-1] [3:98-cv-00088] (mcl) [Entry date 08/19/98] [3:98cv88]
- 8/14/98 103 DECLARATION by Edward Neil Brundridge on behalf of proposed defendants and counterclaimants-in-intervention Edward Neil Brundridge and Ima Carter re motion for leave to intervene [101-1] [3:98-cv-00088] (mcl) [Entry date 08/19/98] [3:98cv88]

Proceedings include all events.

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8/14/98 -- RECEIVED Proposed Order (proposed defendants and counterclaimants-in-intervention Edward Neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier) re: motion for leave to intervene [123-1] in 3:98-cv-00085, re: motion for leave to intervene [101-1] in 3:98-cv-00086, re: motion for leave to intervene [94-1] in 3:98-cv-00087, re: motion for leave to intervene [101-1] in 3:98-cv-00088, re: motion for leave to intervene [106-1] in 3:98-cv-00089, re: motion for leave to intervene [97-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/19/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/17/98 104 NOTICE by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 of entry of order granting defendant's ex parte application for order shortening time for hearing on defendants' motion to dismiss plaintiff's complaint. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/18/98 105 REQUEST by defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086 to file signature pages nunc pro tunc. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/18/98 106 DECLARATION by William G. Panzer on behalf of defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086 re request [125-1] in 3:98-cv-00085, re request [104-1] in 3:98-cv-00086, re request [97-1] in 3:98-cv-00087, re request [105-1] in 3:98-cv-00088, re request [108-1] in 3:98-cv-00089, re request [99-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/18/98 107 ADDENDUM filed by defendant Cannabis Cultivators in 3:98-cv-00085, defendant Dennis Peron in 3:98-cv-00085 to opposition memorandum [114-1] in 3:98-cv-00085, opposition memorandum [92-1] in 3:98-cv-00086, opposition memorandum [85-1] in 3:98-cv-00087, opposition memorandum [92-1] in 3:98-cv-00088, opposition memorandum [95-1] in 3:98-cv-00089, opposition memorandum [88-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 8/18/98 108 ADDENDUM filed by defendant Cannabis Cultivators in 3:98-cv-00085, defendant Dennis Peron in 3:98-cv-00085 to opposition memorandum [113-1] in 3:98-cv-00085, opposition memorandum [91-1] in 3:98-cv-00086, opposition memorandum [84-1] in 3:98-cv-00087, opposition memorandum [91-1] in 3:98-cv-00088, opposition memorandum [94-1] in 3:98-cv-00089, opposition memorandum [87-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/20/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/20/98 109 NOTICE by proposed defendants and counterclaimants-in-intervention Edward Neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier of Order granting defendant-intervenors' exparte motion for order shortening time for hearing on motion for leave to intervene. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/24/98 110 LETTER dated 8/21/98 from Christina Kirk-Kazhe to Judge Breyer re amendment to citation in defendnats' memorandum n opposition to plaintiff's motion to show cause and for summary judgment. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/26/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/24/98 111 OPPOSITION by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 to motion for leave to intervene [123-1] in 3:98-cv-00085, motion for leave to intervene [101-1] in 3:98-cv-00086, motion for leave to intervene [94-1] in 3:98-cv-00087, motion for leave to intervene [101-1] in 3:98-cv-00088, motion for leave to intervene [106-1] in 3:98-cv-00089, motion for leave to intervene [97-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/26/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 8/24/98 -- RECEIVED Proposed Order (Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245) DENYING motion for leave to intervene [123-1] in 3:98-cv-00085, re: motion for leave to intervene [101-1] in 3:98-cv-00086, re: motion for leave to intervene [94-1] in 3:98-cv-00087, re: motion for leave to intervene [101-1] in 3:98-cv-00088, re: motion for leave to intervene [106-1] in 3:98-cv-00089, re: motion for leave to intervene [97-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/26/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/24/98 112 CONSOLIDATED REPLIES by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 to opposition to motion for order to show cause why non-compliant defendants should not be held in contempt, and for summary judgment [86-1] in 3:98-cv-00085, motion to modify 5/19/98 preliminary injunction orders in case nos. C-98-0086, C-98-0087 and C-98-0088 CRB [85-1] in 3:98-cv-00085 and Opposition to defendnat's motion to dismiss in case no. C-98-0088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/26/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/24/98 113 DECLARATION by Mark T. Quinlivan on behalf of Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00089, Plaintiff USA in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/26/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/24/98 114 MOTION by City of Oakland before Judge Charles R. Breyer for leave to file brief amicus curiae [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/27/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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8/24/98 115 MEMORANDUM of points and authorities by City of Oakland in support of motion for leave to file brief amicus curiae [134-1] in 3:98-cv-00085, of motion for leave to file brief amicus curiae [113-1] in 3:98-cv-00086, of motion for leave to file brief amicus curiae [106-1] in 3:98-cv-00087, of motion for leave to file brief amicus curiae [114-1] in 3:98-cv-00088, of motion for leave to file brief amicus curiae [117-1] in 3:98-cv-00089, of motion for leave to file brief amicus curiae [108-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/27/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/24/98 -- RECEIVED Proposed Order (City of Oakland) re: motion for leave to file brief amicus curiae [134-1] in 3:98-cv-00085, re: motion for leave to file brief amicus curiae [113-1] in 3:98-cv-00086, re: motion for leave to file brief amicus curiae [106-1] in 3:98-cv-00087, re: motion for leave to file brief amicus curiae [114-1] in 3:98-cv-00088, re: motion for leave to file brief amicus curiae [117-1] in 3:98-cv-00089, re: motion for leave to file brief amicus curiae [108-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/27/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/27/98 116 LETTER dated 8/25/98 from Robert A. Raich in 3:98-cv-00088 to Judge Breyer re conduct of federal marshals. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/27/98 117 REPLY BRIEF by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to opposition to motion to dismiss case for failure to state a claim [111-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

8/27/98 118 REPLY MEMORANDUM OF POINTS AND AUTHORITIES by proposed defendants and counterclaimants-in-intervention Edward neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier to opposition to motion for leave to intervene [123-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 8/27/98 119 PROOF OF SERVICE by proposed defendants and counterclaimants-in-intervention Edward Neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier of motion reply [138-1] in 3:98-cv-00085, motion reply [117-1] in 3:98-cv-00086, motion reply [110-1] in 3:98-cv-00087, motion reply [118-1] in 3:98-cv-00088, motion reply [121-1] in 3:98-cv-00089, motion reply [112-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/28/98 120 ORDER by Judge Charles R. Breyer granting City of Oakland's motion for leave to file brief amicus curiae [134-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245 (Date Entered: 8/31/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/31/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/28/98 121 AMICUS BRIEF FILED by City of Oakland in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00089, in 3:98-cv-00245 re defendants' motion to dismiss complaint [89-1] in 3:98-cv-00088. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/31/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/28/98 122 LETTER dated 8/28/98 from Pebbles Tripper re enclosed renewed motion for joinder and/or intervention. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 08/31/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 8/31/98 123 MINUTES: (C/R Raynie Mercado) (Hearing Date: 8/31/98) granting proposed defendants and counter-claimants-in-intervention's motion for leave to intervene [123-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245, denying defendant Oakland Cannabis Buyer's motion to dismiss case for failure to state a claim (see document no. 111-1 in C-98-0085) as to 98-cv-00088, granting plaintiff's motion for order to show cause why non-compliant defendants should not be held in contempt, denying plaintiff's motion for summary judgment (document no. 86-1 in C-98-0085) as to C-98-0086, C-98-0087 and C-98-0088 ; Related Case C-98-0089 was DISMISSED without prejudice upon motion of the defendant in said action. Future dates shall be reflected in the Court's order. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 09/02/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87

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- 9/2/98 -- RECEIVED Proposed Order to show cause (Plaintiff USA in 3:98-cv-00088) [3:98-cv-00088] (mcl) [Entry date 09/03/98] [3:98cv88]
- 9/3/98 124 OPPOSITION by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to plaintiff's proposed order to show cause in case nos. C-98-0086, C-98-0087 and C-98-0088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 09/04/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 9/3/98 125 DECLARATION by Gerald F. Uelmen on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re opposition [144-1] in 3:98-cv-00085, re opposition [123-1] in 3:98-cv-00086, re opposition [116-1] in 3:98-cv-00087, re opposition [124-1] in 3:98-cv-00088, re opposition [127-1] in 3:98-cv-00089, re opposition [118-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 09/04/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 9/3/98 126 ORDER by Judge Charles R. Breyer granting proposed defendants and counterclaimants-in-intervention motion for leave to intervene [123-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245 to case(s) 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245. (Date Entered: 9/8/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/08/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/3/98 127 ORDER TO SHOW CAUSE in C-98-0086 re why the Marin Alliance for Medical Marijuana and Lynnette Shaw should not be held in contempt of the Court's 5/19/98 Preliminary Injunction Order : by Judge Charles R. Breyer ; hearing set for 2:30 9/28/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00245. Defendants shall have until 12:00 (PDT) 9/14/98 to file response to OSC, the United States shall have until 12:00 (PDT) 9/21/98 to file a motion in limine, defendants shall have until 12:00 (PDT) 9/25/98 to file opposition to United States' motion in limine (see Order) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/08/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

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- 9/3/98 128 ORDER by Judge Charles R. Breyer denying plaintiff's motion for order to show cause why non-compliant defendants, the Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman and Mildred Lehrman, should not be held in contempt, and for summary judgment [86-1] in case no. 98-cv-00087. (Date Entered: 9/8/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/08/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/3/98 129 ORDER TO SHOW CAUSE re why defendants the Oakland Cannabis Buyers' Cooperative and Jeffrey Jones in case no. C-98-0088 should not be held in contempt of the Court's 5/19/98 Preliminary Injunction Order : by Judge Charles R. Breyer ; hearing set for 2:30 9/28/98 in 3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00245. Defendants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones shall have until 12:00 (PDT) 9/14/98 to file response to OSC, the United States shall have until 12:00 (PDT) 9/21/98 to file a motion in limine, defendants shall have until 12:00 (PDT) 9/25/98 to file opposition to the United States' motion in limine (see Order) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/08/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/3/98 130 ORDER by Judge Charles R. Breyer granting defendants' motion to dismiss case [80-1] in case no. 98-cv-00089. The complaint is hereby DISMISSED without prejudice (Date Entered: 9/8/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 09/08/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]
- 9/3/98 132 ORDER by Judge Charles R. Breyer denying defendants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones motion to dismiss case for failure to state a claim [111-1] in case no. 3:98-cv-00088 (Date Entered: 9/9/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/09/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/4/98 131 PROOF OF SERVICE by City of Oakland of order [140-1] in 3:98-cv-00085, order [119-1] in 3:98-cv-00086, order [112-1] in 3:98-cv-00087, order [120-1] in 3:98-cv-00088, order [123-1] in 3:98-cv-00089, order [114-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (mcl) [Entry date 09/08/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88 3:98cv89]

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- 9/8/98 133 ORDER by Judge Charles R. Breyer dismissing the motion to modify 5/19/98 preliminary injunction orders in case nos. C-98-0086, C-98-0087 and C-98-0088 CRB [85-1] in 3:98-cv-00085, denying proposed intervenor Pebbles Trippet's motion for joinder &/or intervention [59-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245 (Date Entered: 9/9/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/09/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/10/98 134 NOTICE by Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00085, Intervenor-Defendant Ima Carter in 3:98-cv-00085, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00085, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00085 of entry of order granting motion to intervene by defendant-intervenors Edward Neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/11/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/14/98 135 RESPONSE by defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086 to order to show cause [147-1] in 3:98-cv-00085, order to show cause [126-1] in 3:98-cv-00086, order to show cause [119-1] in 3:98-cv-00087, order to show cause [127-1] in 3:98-cv-00088, order to show cause [121-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/15/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/14/98 136 DECLARATION by Lynette Shaw on behalf of defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086 re deadline [155-1] in 3:98-cv-00085, re deadline [134-1] in 3:98-cv-00086, re deadline [127-1] in 3:98-cv-00087, re deadline [135-1] in 3:98-cv-00088, re deadline [129-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/15/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/14/98 137 DECLARATION by Christopher P. M. Conrad on behalf of defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086 re deadline [155-1] in 3:98-cv-00085, re deadline [134-1] in 3:98-cv-00086, re deadline [127-1] in 3:98-cv-00087, re deadline [135-1] in 3:98-cv-00088, re deadline [129-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/15/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

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9/14/98 138 DECLARATION by Helen Collins, M.D. on behalf of Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00085, Intervenor-Defendant Ima Carter in 3:98-cv-00085, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00085, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00085, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00086, Intervenor-Defendant Ima Carter in 3:98-cv-00086, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00086, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00086, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00087, Intervenor-Defendant Ima Carter in 3:98-cv-00087, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00087, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00087, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00088, Intervenor-Defendant Ima Carter in 3:98-cv-00088, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00088, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00088, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00245, Intervenor-Defendant Ima Carter in 3:98-cv-00245, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00245, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/15/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/14/98 139 RESPONSE by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to order to show cause [149-1] in 3:98-cv-00085, order to show cause [128-1] in 3:98-cv-00086, order to show cause [121-1] in 3:98-cv-00087, order to show cause [129-1] in 3:98-cv-00088, order to show cause [123-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/15/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/14/98 140 DECLARATIONS on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re deadline [159-1] in 3:98-cv-00085, re deadline [138-1] in 3:98-cv-00086, re deadline [131-1] in 3:98-cv-00087, re deadline [139-1] in 3:98-cv-00088, re deadline [133-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/15/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/14/98 141 REQUEST FOR JUDICIAL NOTICE by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/15/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

Proceedings include all events.

3:98cv88 USA v. Oakland Cannabis, et al

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9/21/98 142 MOTION before Judge Charles R. Breyer by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00245 in limine to exclude defendants' affirmative defenses [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/22/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/21/98 -- RECEIVED Proposed Order (Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00245) re: motion in limine to exclude defendants' affirmative defenses [162-1] in 3:98-cv-00085, re: motion in limine to exclude defendants' affirmative defenses [141-1] in 3:98-cv-00086, re: motion in limine to exclude defendants' affirmative defenses [134-1] in 3:98-cv-00087, re: motion in limine to exclude defendants' affirmative defenses [142-1] in 3:98-cv-00088, re: motion in limine to exclude defendants' affirmative defenses [136-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/22/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/23/98 143 NOTICE by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00245 of recent decision [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/24/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/24/98 144 EX-PARTE APPLICATION before Judge Charles R. Breyer by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/25/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

Proceedings include all events.

3:98cv88 USA v. Oakland Cannabis, et al

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9/24/98 145

DECLARATION by Andrew A. Steckler on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [164-1] in 3:98-cv-00085, re motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [143-1] in 3:98-cv-00086, re motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [136-1] in 3:98-cv-00087, re motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [144-1] in 3:98-cv-00088, re motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [138-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/25/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/24/98 --

RECEIVED Proposed Order (defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088) re: motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [164-1] in 3:98-cv-00085, re: motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [143-1] in 3:98-cv-00086, re: motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [136-1] in 3:98-cv-00087, re: motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [144-1] in 3:98-cv-00088, re: motion to continue hearing date for plaintiff's motions in limine to exclude defendants' affirmative defenses [138-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/25/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

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~~OPPOSITION~~ by defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086 to motion in limine to exclude defendants' affirmative defenses [162-1] in 3:98-cv-00085, motion in limine to exclude defendants' affirmative defenses [141-1] in 3:98-cv-00086, motion in limine to exclude defendants' affirmative defenses [134-1] in 3:98-cv-00087, motion in limine to exclude defendants' affirmative defenses [142-1] in 3:98-cv-00088, motion in limine to exclude defendants' affirmative defenses [136-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

Proceedings include all events.

3:98cv88 USA v. Oakland Cannabis, et al

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9/25/98 -- RECEIVED Proposed Order (defendant Marin Alliance in 3:98-cv-00086, defendant Lynette Shaw in 3:98-cv-00086) denying plaintiff USA's motion in limine to exclude defendants' affirmative defenses [162-1] in 3:98-cv-00085, re: motion in limine to exclude defendants' affirmative defenses [141-1] in 3:98-cv-00086, re: motion in limine to exclude defendants' affirmative defenses [134-1] in 3:98-cv-00087, re: motion in limine to exclude defendants' affirmative defenses [142-1] in 3:98-cv-00088, re: motion in limine to exclude defendants' affirmative defenses [136-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/28/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/25/98 147 MINUTES: (C/R Maria Amador) (Hearing Date: 9/25/98) resetting hearing on plaintiff's motion in limine to exclude defendants' affirmative defenses [142-1] 2:30 10/5/98 [3:98-cv-00088] (mcl) [Entry date 09/28/98] [3:98cv88]

9/28/98 148 APPLICATION by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 for use immunity for statements or testimony of defendant and defense witnesses in case no. C-98-0088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/29/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/28/98 149 DECLARATION by Andrew A. Steckler on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re application [167-1] in 3:98-cv-00085, re application [147-1] in 3:98-cv-00086, re application [139-1] in 3:98-cv-00087, re application [148-1] in 3:98-cv-00088, re application [141-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/29/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/28/98 -- RECEIVED Proposed Order (defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088) re: application [167-1] in 3:98-cv-00085, re: application [147-1] in 3:98-cv-00086, re: application [139-1] in 3:98-cv-00087, re: application [148-1] in 3:98-cv-00088, re: application [141-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/29/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

Proceedings include all events.
3:98cv88 USA v. Oakland Cannabis, et al

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- 9/28/98 150 OPPOSITION by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to motion in limine to exclude defendants' affirmative defenses [162-1] in 3:98-cv-00085, motion in limine to exclude defendants' affirmative defenses [141-1] in 3:98-cv-00086, motion in limine to exclude defendants' affirmative defenses [134-1] in 3:98-cv-00087, motion in limine to exclude defendants' affirmative defenses [142-1] in 3:98-cv-00088, motion in limine to exclude defendants' affirmative defenses [136-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 09/29/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/30/98 151 EX-PARTE APPLICATION before Judge Charles R. Breyer by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 to shorten time for hearing on defendants' motion for protective order re confidential information [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/01/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 9/30/98 152 DECLARATION by Andrew A. Steckler on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re motion to shorten time for hearing on defendants' motion for protective order re confidential information [170-1] in 3:98-cv-00085, re motion to shorten time for hearing on defendants' motion for protective order re confidential information [150-1] in 3:98-cv-00086, re motion to shorten time for hearing on defendants' motion for protective order re confidential information [142-1] in 3:98-cv-00087, re motion to shorten time for hearing on defendants' motion for protective order re confidential information [151-1] in 3:98-cv-00088, re motion to shorten time for hearing on defendants' motion for protective order re confidential information [144-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/01/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

Proceedings include all events.

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9/30/98 -- RECEIVED Proposed Order (defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088) re: motion to shorten time for hearing on defendants' motion for protective order re confidential information [170-1] in 3:98-cv-00085, re: motion to shorten time for hearing on defendants' motion for protective order re confidential information [150-1] in 3:98-cv-00086, re: motion to shorten time for hearing on defendants' motion for protective order re confidential information [142-1] in 3:98-cv-00087, re: motion to shorten time for hearing on defendants' motion for protective order re confidential information [151-1] in 3:98-cv-00088, re: motion to shorten time for hearing on defendants' motion for protective order re confidential information [144-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/01/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

9/30/98 153 AMENDED DECLARATION by Michael M. Alcalay, M.D., M.P.H. on behalf of defendants in 3:98-cv-00088 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/01/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

10/1/98 154 ORDER by Judge Charles R. Breyer granting defendants Oakland Cannabis Buyers and Jeffrey Jones' motion to shorten time for hearing on defendants' motion for protective order re confidential information [170-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245 (Date Entered: 10/1/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245]. The hearing on defendants' motion for protective order shall be set for 10/5/98 at 2:30 pm. (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

10/1/98 155 NOTICE OF MOTION AND MOTION WITH MEMORANDUM OF POINTS AND AUTHORITIES before Judge Charles R. Breyer by defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 for protective order re confidential information with Notice set for 10/5/98 at 2:30 pm [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

Proceedings include all events.

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- 10/1/98 156 DECLARATION by Michael M. Alcalay, M.D., M.P.H. on behalf of defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 re motion for protective order re confidential information [174-1] in 3:98-cv-00085, re motion for protective order re confidential information [154-1] in 3:98-cv-00086, re motion for protective order re confidential information [146-1] in 3:98-cv-00087, re motion for protective order re confidential information [155-1] in 3:98-cv-00088, re motion for protective order re confidential information [148-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 10/1/98 -- RECEIVED Proposed Order (defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088) re: motion for protective order re confidential information [174-1] in 3:98-cv-00085, re: motion for protective order re confidential information [154-1] in 3:98-cv-00086, re: motion for protective order re confidential information [146-1] in 3:98-cv-00087, re: motion for protective order re confidential information [155-1] in 3:98-cv-00088, re: motion for protective order re confidential information [148-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 10/1/98 157 REPLY by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00245 to opposition to motion in limine to exclude defendants' affirmative defenses [162-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 10/1/98 157 OPPOSITION by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00245 to application [167-1] in 3:98-cv-00085, application [147-1] in 3:98-cv-00086, application [139-1] in 3:98-cv-00087, application [148-1] in 3:98-cv-00088, application [141-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

Proceedings include all events.

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10/1/98 -- RECEIVED Proposed Order (Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00245) re: application [167-1] in 3:98-cv-00085, denying application [147-1] in 3:98-cv-00086, denying application [139-1] in 3:98-cv-00087, denying application [148-1] in 3:98-cv-00088, denying application [141-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

10/2/98 158 ANSWER by Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00088, Intervenor-Defendant Ima Carter in 3:98-cv-00088 to complaint [1-1]; jury demand [3:98-cv-00088] (mcl) [Entry date 10/05/98] [3:98cv88]

10/2/98 159 COUNTERCLAIM-INTERVENTION for declaratory and injunctive relief by counterclaimants-in-intervention Edward Neil Brundridge, Ima Carter, Rebecca Nikkel and Lucia Y. Vier; jury demand against Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/05/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

10/2/98 160 PROOF OF SERVICE by Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00085, Intervenor-Defendant Ima Carter in 3:98-cv-00085, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00085, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00085, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00086, Intervenor-Defendant Ima Carter in 3:98-cv-00086, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00086, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00086, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00087, Intervenor-Defendant Ima Carter in 3:98-cv-00087, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00087, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00087, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00088, Intervenor-Defendant Ima Carter in 3:98-cv-00088, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00088, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00088, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00245, Intervenor-Defendant Ima Carter in 3:98-cv-00245, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00245, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00245 of counterclaim [177-1] in 3:98-cv-00085, counterclaim [158-1] in 3:98-cv-00086, counterclaim [150-1] in 3:98-cv-00087, counterclaim [159-1] in 3:98-cv-00088, counterclaim [151-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/05/98] [3:98cv245 3:98cv85 3:98cv86

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10/2/98 161 PROOF OF SERVICE by Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00088, Intervenor-Defendant Ima Carter in 3:98-cv-00088, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00088, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00088 of answer [158-1] [3:98-cv-00088] (mcl) [Entry date 10/05/98] [3:98cv88]

10/5/98 162 EX-PARTE APPLICATION by California Medical Association before Judge Charles R. Breyer to file amicus brief in support of protective order and to appear at 10/5/98 hearing ; attached declaration of Alice P. Mead. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

10/5/98 -- RECEIVED Proposed Order (California Medical Association) re: motion to file amicus brief in support of protective order and to appear at 10/5/98 hearing [179-1] in 3:98-cv-00085, re: motion to file amicus brief in support of protective order and to appear at 10/5/98 hearing [161-1] in 3:98-cv-00086, re: motion to file amicus brief in support of protective order and to appear at 10/5/98 hearing [153-1] in 3:98-cv-00087, re: motion to file amicus brief in support of protective order and to appear at 10/5/98 hearing [162-1] in 3:98-cv-00088, re: motion to file amicus brief in support of protective order and to appear at 10/5/98 hearing [153-1] in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

10/5/98 -- RECEIVED Brief of Amicus Curiae California Medical Association in support of protective order. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

~~10/5/98~~ -- RECEIVED Amicus Curiae California Medical Association's request for judicial notice. [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

10/5/98 163 ORDER by Judge Charles R. Breyer granting motion to file amicus brief in support of protective order and to appear at 10/5/98 hearing [179-1] an amicus brief by CA Medical Assoc to case(s) 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245. in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245 (Date Entered: 10/6/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/06/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]

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- 10/5/98 164 AMICUS BRIEF FILED by Amicus Curiae CA Medical Assoc in
3:98-cv-00085, Amicus Curiae CA Medical Assoc in
3:98-cv-00086, Amicus Curiae CA Medical Assoc in
3:98-cv-00087, Amicus Curiae CA Medical Assoc in
3:98-cv-00088, Amicus Curiae CA Medical Assoc in
3:98-cv-00245 in 3:98-cv-00085, in 3:98-cv-00086, in
3:98-cv-00087, in 3:98-cv-00088, in 3:98-cv-00245
[3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/06/98]
[3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 10/5/98 165 REQUEST FOR JUDICIAL NOTICE by Amicus Curiae CA Medical
Assoc in 3:98-cv-00085, Amicus Curiae CA Medical Assoc in
3:98-cv-00086, Amicus Curiae CA Medical Assoc in
3:98-cv-00087, Amicus Curiae CA Medical Assoc in
3:98-cv-00088, Amicus Curiae CA Medical Assoc in
3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00245] (mcl) [Entry date 10/06/98]
[3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 10/5/98 179 MINUTES: (C/R Rosita Flores) (Hearing Date: 10/5/98) that
the motion for protective order re confidential information
[155-1] is submitted, that the motion in limine to exclude
defendants' affirmative defenses [142-1] is submitted ;
Order to be prepared by court ; [3:98-cv-00088] (gba)
[Entry date 11/03/98] [3:98cv88]
- 10/6/98 166 LETTER dated 10/6/98 from Andrew A. Steckler in
3:98-cv-00088 to Judge Breyer re changes to defendants'
proposed Protective Order re confidential information.
[3:98-cv-00088] (mcl) [Entry date 10/07/98] [3:98cv88]
- 10/7/98 167 NOTICE of entry of order by defendant Oakland Cannabis in
3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088 in
3:98-cv-00085, in 3:98-cv-00086, in 3:98-cv-00087, in
3:98-cv-00088, re 3:98-cv-00245 [147-1] order
[3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00245] (mcl) [3:98cv245 3:98cv85
3:98cv86 3:98cv87 3:98cv88]
- 10/8/98 168 PROTECTIVE ORDER by Judge Charles R. Breyer : granting
motion for protective order re confidential information
[174-1] in 3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00245 (cc: all counsel)
[3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087,
3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245] (db)
[Entry date 10/14/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87
3:98cv88 3:98cv89]
- 10/8/98 169 NOTICE OF APPEAL by defendant Oakland Cannabis in
3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088
from Dist. Court decision order [133-1] Fee status not paid
[3:98-cv-00088] (gba) [Entry date 10/14/98]
[3:98cv88]

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10/8/98 -- Copy of notice of appeal and docket sheet to all counsel
[3:98-cv-00088] (gba) [Entry date 10/14/98] [3:98cv88]

10/8/98 -- Docket fee notification form and case information sheet to
USCA [169-1] [3:98-cv-00088] (gba) [Entry date 10/14/98]
[3:98cv88]

10/13/98 170 ORDER by Judge Charles R. Breyer modifying injunction (
Date Entered: 10/14/98) (cc: all counsel) [3:98-cv-00088]
(gba) [Entry date 10/14/98] [3:98cv88]

10/13/98 171 MEMORANDUM AND ORDER: by Judge Charles R. Breyer that
plaintiff's motions to preclude defendants' affirmative
defenses of "joint user," "necessity," and "substantive due
process," are GRANTED. (Date Entered: 10/13/98) (cc: all
counsel) [3:98-cv-00088] (gba) [Entry date 10/14/98]
[3:98cv88]

10/13/98 172 MEMORANDUM AND ORDER: by Judge Charles R. Breyer that
plaintiff's motions to preclude defendants' affirmative
defenses of "joint user," and "substantive due process,"
are GRANTED. (Date Entered: 10/14/98) (cc: all counsel)
[3:98-cv-00088] (gba) [Entry date 10/14/98] [3:98cv88]

10/15/98 173 EX-PARTE APPLICATION before Judge Charles R. Breyer by
defendant Oakland Cannabis in 3:98-cv-00088, defendant
Jeffrey Jones in 3:98-cv-00088 to stay order modifying
injunction pending appeal, and MOTION to modify
preliminary injunction order to permit distribution of
cannabis only to patients with medical necessity
[3:98-cv-00088] (rs) [Entry date 10/16/98] [3:98cv88]

10/15/98 174 DECLARATION by Andrew A. Steckler on behalf of defendant
Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones
in 3:98-cv-00088 re motion to stay order modifying
injunction pending appeal [173-1], re motion to modify
preliminary injunction order to permit distribution of
cannabis only to patients with medical necessity [173-2]
[3:98-cv-00088] (rs) [Entry date 10/16/98] [3:98cv88]

10/15/98 -- RECEIVED Proposed Order (defendant Oakland Cannabis in
3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088)
re: motion to modify preliminary injunction order to permit
distribution of cannabis only to patients with medical
necessity [173-2] [3:98-cv-00088] (rs) [Entry date 10/16/98]
[3:98cv88]

10/15/98 -- RECEIVED Proposed Order (defendant Oakland Cannabis in
3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088)
re: motion to stay order modifying injunction pending
appeal [173-1] [3:98-cv-00088] (rs) [Entry date 10/16/98]
[3:98cv88]

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- 10/15/98 -- RECEIVED (Alternative) Proposed Order (defendant Oakland Cannabis in 3:98-cv-00088, defendant Jeffrey Jones in 3:98-cv-00088) re: motion to stay order modifying injunction pending appeal [173-1] [3:98-cv-00088] (rs) [Entry date 10/16/98] [3:98cv88]
- 10/16/98 175 NOTICE OF APPEAL by defendants Oakland Cannabis and Jeffrey Jones in 3:98-cv-00088 from Dist. Court decision order [170-2]; Fee status pd [3:98-cv-00088] (slh) [Entry date 10/19/98] [3:98cv88]
- 10/16/98 176 DECLARATION in support of request for stay of modification to preliminary injunction, by Ima Carter on behalf of Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00085, Intervenor-Defendant Ima Carter in 3:98-cv-00085, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00085, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00085, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00086, Intervenor-Defendant Ima Carter in 3:98-cv-00086, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00086, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00086, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00087, Intervenor-Defendant Ima Carter in 3:98-cv-00087, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00087, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00087, Intervenor-Defendant Edward Neil Brundridge in 3:98-cv-00088, Intervenor-Defendant Ima Carter in 3:98-cv-00088, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00088, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00088, Intervenor-Defendant Ima Carter in 3:98-cv-00245, Intervenor-Defendant Rebecca Nikkel in 3:98-cv-00245, Intervenor-Defendant Lucia Y. Vier in 3:98-cv-00245, Counter-defendant USA in 3:98-cv-00245 [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (db) [Entry date 10/21/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 10/16/98 177 OPPOSITION to Oakland Defendants' Ex Parte Motions in Case C980088 CRB by Plaintiff USA in 3:98-cv-00085, Plaintiff USA in 3:98-cv-00086, Plaintiff USA in 3:98-cv-00087, Plaintiff USA in 3:98-cv-00088, Plaintiff USA in 3:98-cv-00245 to [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (db) [Entry date 10/21/98] [3:98cv245 3:98cv85 3:98cv86 3:98cv87 3:98cv88]
- 10/16/98 178 ORDER by Judge Charles R. Breyer granting motion to stay order modifying injunction pending appeal [173-1] in 3:98-cv-00088 denying motion to modify preliminary injunction order to permit distribution of cannabis only to patients with medical necessity [173-2] in 3:98-cv-00088 (Date Entered: 10/21/98) (cc: all counsel) [3:98-cv-00085, 3:98-cv-00086, 3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00245] (db) [Entry date 10/21/98] [3:98cv245 3:98cv85 3:98cv86

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3:98cv88 USA v. Oakland Cannabis, et al

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3:98cv87 3:98cv88]

10/19/98 -- Copy of notice of appeal and docket sheet to all counsel
[3:98-cv-00088] (slh) [3:98cv88]

10/19/98 -- Docket fee notification form and case information sheet to
USCA [175-1] [3:98-cv-00088] (slh) [3:98cv88]

10/21/98 180 ORDER by Judge Charles R. Breyer that the trial setting
conference in US v. Marin Alliance for Medical Marijuana,
Case C98-86 is continued to 10/28/98 at 2:30 p.m. (cc: all
counsel) [3:98-cv-00088] (gba) [Entry date 11/03/98]
[3:98cv88]

10/22/98 181 TRANSCRIPT DESIGNATION and Ordering Form filed by defendant
in 3:98-cv-00088 for dates 3/24/98 - Kathy Wyatt, 8/31/98 -
Raynee Mercado ; 10/5/98 - C/R: Rosita Flores; appeal
[175-1] [3:98-cv-00088] (gba) [Entry date 11/03/98]
[3:98cv88]

10/26/98 -- FILING FEE: fee paid on 10/26/98 in the amount of \$ 105.00,
receipt # 132993. (for notice of appeal filed 10/8/98)
[3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/26/98 182 TRANSCRIPT DESIGNATION and Ordering Form filed by defendant
in 3:98-cv-00088 for dates 8/31/98 ; C/R: Raynee Mercado;
appeal [169-1] [3:98-cv-00088] (gba) [Entry date 11/03/98]
[3:98cv88]

10/27/98 183 NOTICE OF APPEAL by defendant in 3:98-cv-00088 from Dist.
Court decision order [178-1] Fee status paid
[3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/27/98 -- Copy of notice of appeal and docket sheet to all counsel
[3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/27/98 -- Docket fee notification form and case information sheet to
USCA [183-1] [3:98-cv-00088] (gba) [Entry date 11/03/98]
[3:98cv88]

10/28/98 -- NOTIFICATION by Circuit Court of Appellate Docket Number
98-16950 [3:98-cv-00088] (gba) [Entry date 11/03/98]
[3:98cv88]

10/29/98 184 EX-PARTE APPLICATION before Judge Charles R. Breyer by
defendant in 3:98-cv-00088 to reenter the premises at 1755
Broadway, Oakland, California [3:98-cv-00088] (gba)
[Entry date 11/03/98] [3:98cv88]

10/29/98 185 DECLARATION by Robert A. Raich on behalf of defendant in
3:98-cv-00088 re motion to reenter the premises at 1755
Broadway, Oakland, California [184-1] [3:98-cv-00088] (gba)
[Entry date 11/03/98] [3:98cv88]

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10/29/98 186 DECLARATION by Dr. Michael M. Alcalay on behalf of defendant in 3:98-cv-00088 re motion to reenter the premises at 1755 Broadway, Oakland, California [184-1] [3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/29/98 187 MINUTES: (C/R Kathy Wyatt) (Hearing Date: 10/29/98) Court will allow defendant to reenter the premise but if the government believes that the injunction is being violated, then the government can order the U.S. Marshals to close down the premise pending hearing from the court ; [3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/29/98 188 DECLARATION by Jeffrey Jones on behalf of defendant in 3:98-cv-00088 [3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/29/98 189 OPPOSITION by Plaintiff in 3:98-cv-00088 to defendant's motion to reenter the premises at 1755 Broadway, Oakland, California [184-1] [3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/29/98 190 DECLARATION by Mark T. Quinlivan on behalf of Plaintiff in 3:98-cv-00088 re opposition [189-1] [3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/30/98 191 ORDER by Judge Charles R. Breyer that the defendant's ex parte motion is hereby GRANTED in part. The 10/13/98 modification to the 5/19/98 preliminary injunction is VACATED. The 5/19/98 preliminary injunction is modified, please see order for details (cc: all counsel) [3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

10/30/98 192 TRANSCRIPT DESIGNATION and Ordering Form filed by defendant in 3:98-cv-00088 for dates 3/24/98 - Kathy Wyatt, 8/31/98 - Raynee Mercado ; 10/5/98 - C/R: Rosita Flores; appeal [175-1] [3:98-cv-00088] (gba) [Entry date 11/03/98] [3:98cv88]

Proceedings include events between 11/1/98 and 11/9/98.
3:98cv88 USA v. Oakland Cannabis, et al

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U.S. District Court
U.S. District for the Northern District of California (S.F.)

CIVIL DOCKET FOR CASE #: 98-CV-88

USA v. Oakland Cannabis, et al
Assigned to: Judge Charles R. Breyer
Demand: \$0,000
Lead Docket: 98-CV-85
Dkt# in other court: None

Filed: 01/09/98
Jury demand: Defendant
Nature of Suit: 890
Jurisdiction: US Plaintiff

Cause: 28:1331 Fed. Question

11/2/98 -- REPORTER'S TRANSCRIPT; Date of proceedings: 8/31/98 (C/R:
Raynee H. Mercado) [3:98-cv-00085, 3:98-cv-00086,
3:98-cv-00087, 3:98-cv-00088, 3:98-cv-00089, 3:98-cv-00245]
(db) [Entry date 11/03/98] [3:98cv245 3:98cv85 3:98cv86
3:98cv87 3:98cv88 3:98cv89]

11/4/98 -- NOTIFICATION by Circuit Court of Appellate Docket Number
98-17044 [3:98-cv-00088] (gba) [Entry date 11/05/98]
[3:98cv88]