



USCA DOCKET # (IF KNOWN)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: United States of America v. Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman and Mildred Lehrman	DISTRICT: N.D. Cal.		JUDGE: Charles R. Breyer
	DISTRICT COURT NUMBER: C 98-00087-CRB		
	DATE NOTICE OF APPEAL FILED: August , 2002	IS THIS A CROSS-APPEAL? <input type="checkbox"/> YES	
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): 98-16950, 98-17044, 98-17137, 00-16411 (and all related actions) (this was a related case)		
BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW: Please see Attachment			
PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: Please see Attachment			
PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS): Please see Attachment			
DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:			
<input type="checkbox"/> Possibility of settlement			
<input type="checkbox"/> Likelihood that intervening precedent will control outcome of appeal			
<input type="checkbox"/> Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify) _____			
<input type="checkbox"/> Any other information relevant to the inclusion of this case in the Mediation Program _____			
<input type="checkbox"/> Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges			

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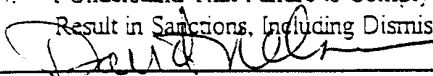
LOWER COURT INFORMATION

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> Federal Question <input type="checkbox"/> Diversity <input type="checkbox"/> Other (Specify):	<input checked="" type="checkbox"/> Final Decision of District Court <input type="checkbox"/> Interlocutory Decision Appealable As of Right <input type="checkbox"/> Interlocutory Order Certified by District Judge (Specify): <input type="checkbox"/> Other (Specify):	<input type="checkbox"/> Default Judgment <input type="checkbox"/> Dismissal/jurisdiction <input type="checkbox"/> Dismissal/merits <input checked="" type="checkbox"/> Summary Judgment <input checked="" type="checkbox"/> Judgment/court Decision <input type="checkbox"/> Judgment/jury Verdict <input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Judgment as a Matter of Law <input type="checkbox"/> Other (Specify):	<input type="checkbox"/> Damages: Sought \$ _____ Awarded \$ _____ <input checked="" type="checkbox"/> Injunctions: <input type="checkbox"/> Preliminary <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Granted <input type="checkbox"/> Denied <input type="checkbox"/> Attorney Fees: Sought \$ _____ Awarded \$ _____ <input type="checkbox"/> Pending <input type="checkbox"/> Costs: \$ _____

CERTIFICATION OF COUNSEL

I CERTIFY THAT:

1. Copies of Order/Judgment Appealed Form Are Attached.
2. A Current Service List or Representation Statement With Telephone and Fax Numbers Are Attached (See 9th Cir. Rule 3-2).
3. A Copy of This Civil Appeals Docketing Statement Was Served in Compliance with FRAP 25.
4. I Understand That Failure to Comply With These Filing Requirements May Result in Sanctions, Including Dismissal of This Appeal.



 Signature

August 21, 2002

 Date

COUNSEL WHO COMPLETED THIS FORM

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Attachment to Ninth Circuit Civil Appeals Docketing Statement

*United States v. Ukiah Cannabis Buyer's Club,
Cherrie Lovett, Marvin Lehrman, and Mildren Lehrman*
Northern District of California, Case No. C-98-00087-CRB

I. Brief Description of Nature of Action and Result Below:

In November 1996, California voters enacted an initiative measure entitled the Compassionate Use Act of 1996 (Proposition 215), to permit seriously ill patients and their primary caregivers to possess and cultivate cannabis with the approval or recommendation of a physician. To implement the will of California voters, Defendants organized a Club to provide seriously ill patients with a safe and reliable source of medical cannabis. The Club, a not-for-profit organization, operates in Ukiah, California, in cooperation with the Mendocino County Sheriff and other local law enforcement authorities.

On January 9, 1998, the United States sued in the United States District Court for the Northern District of California, seeking to enjoin Defendants from distributing cannabis to patient-members. On May 19, 1998, the District Court issued a preliminary injunction enjoining Defendants from "engaging in the manufacture or distribution of marijuana, or the possession of marijuana with the intent to manufacture and distribute marijuana, in violation of 21 U.S.C. §841(a)(1)."

The government moved to have the Ukiah Cannabis Buyer's Club and the other Defendants held in contempt of the preliminary injunction. However, Judge Breyer issued an order on September 3, 1998, denying the motion for the order to show cause as it related to the Ukiah Cannabis Buyer's Club. The court did find certain other Defendants in contempt of the preliminary injunction and they consequently appealed this finding and others to the Ninth Circuit Court of Appeals and finally to the United States Supreme Court. This led finally to the U.S. Supreme Court's decision on May 15, 2001. The case was subsequently remanded to the District Court where all of the Defendants were once again reunited.

On January 7, 2002, Defendants moved, after remand, to dissolve or modify the preliminary injunction order. On January 25, 2002, the government moved for summary judgment and permanent injunctive relief.

On May 3, 2002, the District Court granted the government's motion for summary judgment and requested that Defendants file further submissions with the court "concerning the likelihood of future violations of the act and in particular, whether there is a threat that Defendants, or any of them, will resume their distribution activity if the court does not enter a permanent injunction." (Order of May 3, 2002.) On June 10, 2002, Judge Breyer permanently enjoined Defendants from possessing with intent to distribute, manufacturing or distributing cannabis. Judgement was entered thereon on June 11, 2002. On July 29, 2002, the court granted Defendants' motion for partial judgment pursuant to Federal Rule of Civil Procedure 54(b).

Defendants now appeal a final judgment under 28 U.S.C. §1291, as well as other interlocutory orders.

II. Issues Proposed to be Raised on Appeal:

- A. Did the District Court err in denying Defendants' motion to dismiss?
- B. Did the District Court err in precluding Defendants' affirmative defenses?
- C. Did the District Court err in denying Defendants' motions to modify or dissolve the preliminary injunction?
- D. Did the District Court err in granting summary judgment and issuing a permanent injunction?

III. Other Legal Proceedings With a Bearing on This Case:

A related appeal has been filed on August 1, 2002, by the Oakland Cannabis Buyers' Cooperative in *United States v. Oakland Cannabis Buyers' Cooperative and Jeffrey Jones*, Case No. C 98-0088 CRB. It is requested that these matters be consolidated.

**Appendix to Ninth Circuit Civil Appeals Docketing Statement
Attaching Copies of Order/Judgment Appealed From
Per Certificate of Counsel Requirement Number One**

*United States v. Ukiah Cannabis Buyer's Club,
Cherrie Lovett, Marvin Lehrman, and Mildren Lehrman*
Northern District of California, Case No. C-98-00087-CRB

Orders Attached:

1. May 19, 1998 Order denying Defendants' Motion to Dismiss.
2. May 19, 1998 Order for Preliminary Injunction.
3. October 13, 1998 Order precluding Affirmative Defenses.
4. December 3, 1998 Order Denying Motion for Reconsideration.
5. May 3, 2002 Order granting government's Motion for Summary Judgment and Permanent Injunction.
6. June 10, 2002 Order regarding issuance of permanent injunction.
7. July 29, 2002 Order granting Defendants' Motion for Entry of Partial Final Judgment Pursuant to Federal Rule of Civil Procedure 54(b).

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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,

No. C 98-0085 CRB
C 98-0086 CRB
C 98-0087 CRB
C 98-0088 CRB
C 98-0089 CRB
C 98-0245 CRB

Plaintiff,

v.

CANNABIS CULTIVATORS CLUB, et al.,

Defendants.

AND RELATED ACTIONS

ORDER

For the reasons stated in the Memorandum and Order dated May 13, 1998, defendants' motion to dismiss for lack of jurisdiction and defendants' motion to dismiss on abstention grounds are DENIED. Defendants must file their answers to the complaints in the above actions within thirty (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.

IT IS SO ORDERED.

Dated: May 18, 1998



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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

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

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United States District Court
For the Northern District of California

UNITED STATES OF AMERICA,

No. C 98-00087 CRB

Plaintiff,

PRELIMINARY INJUNCTION ORDER

v.

UKIAH CANNIBAS BUYER'S CLUB,
CHERRIE LOVETT, MARVIN LEHRMAN,
and MILDRED LEHRMAN,

Defendants.

For the reasons stated in its Memorandum and Order dated May 13, 1998, it is hereby
ORDERED as follows:

1. Defendants Ukiah Cannibas Buyer's Club, Cherrie Lovett, Marvin Lehrman,
and Mildred Lehrman are hereby preliminarily enjoined, pending further order of the Court,
from engaging in the manufacture or distribution of marijuana, or the possession of
marijuana with the intent to manufacture and distribute marijuana, in violation of 21 U.S.C. §
841(a)(1); and

2. Defendants Ukiah Cannibas Buyer's Club, Cherrie Lovett, Marvin Lehrman,
and Mildred Lehrman are hereby preliminarily enjoined from using the premises of 40A
Pallini Lane, Ukiah, California for the purposes of engaging in the manufacture and
distribution of marijuana; and

3. Defendants Ukiah Cannibas Buyer's Club, Cherrie Lovett, Marvin Lehrman,

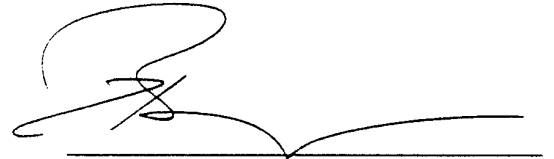
1 and Mildred Lehrman are hereby preliminarily enjoined from conspiring to violate the
2 Controlled Substances Act, 21 U.S.C. § 841(a)(1) with respect to the manufacture or
3 distribution of marijuana, or the possession of marijuana with the intent to manufacture and
4 distribute marijuana.

5 4. It shall not be a violation of this injunction for defendants to seek and obtain
6 legal advice from their attorneys.

7 5. Pursuant to Federal Rule of Civil Procedure 65(d), this injunction shall bind
8 the defendants, their officers, agents, servants, employees, successors, and attorneys, and
9 those persons in active concert or participation with them who receive notice of the order by
10 personal service or otherwise.

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12 **IT IS SO ORDERED.**

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14 Dated: May 15, 1998

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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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ANDREW A. STECKLER

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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

MEMORANDUM AND ORDER RE:
MOTIONS IN LIMINE AND ORDER
TO SHOW CAUSE IN CASE NO. 98-
00086 (Marin Alliance for Medical
Marijuana)

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 violation 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 orders that a jury shall determine whether defendants violated the May 19, 1998 injunction.

BACKGROUND

On May 19, 1998, the Court issued an order preliminarily enjoining defendants Marin Alliance for Medical Marijuana ("Marin Alliance") and Lynnette Shaw from, among other things, "engaging in the manufacture or distribution of marijuana, or the possession of

1 marijuana with the intent to manufacture or distribute marijuana, in violation of 21 U.S.C.
2 § 841(a)(1),” and “using the premises of Suite 210, School Street Plaza, Fairfax, California
3 for the purposes of engaging in the manufacture and distribution of marijuana.” The Court
4 subsequently issued an order that defendants show cause “why they should not be held in
5 civil contempt of the Court’s May 19, 1998 Preliminary Injunction Order by distributing
6 marijuana and by using the premises of 6 School Street Plaza, Fairfax, California, for the
7 purpose of distributing marijuana, on May 27, 1998.” The Court’s show cause order was
8 based upon evidence submitted by plaintiff as follows:

9 (1) A declaration from Special Agent Bill Nyfeler of the Drug Enforcement
10 Administration (“DEA”) in which he attests that on May 27, 1998 he observed 14 individuals
11 enter the Marin Alliance, located at 6 School Street Plaza, in Fairfax, California. He further
12 observed that several of these individuals, upon exiting the Marin Alliance, would roll what
13 appeared to be marijuana cigarettes and smoke them in the area directly outside the Marin
14 Alliance. In addition, that same day at approximately 3:15 p.m., he placed a recorded
15 telephone call to the Marin Alliance, at (415) 256-9328. A pre-recorded message stated that
16 the caller had reached the Marin Alliance, and that the club was still open under the “medical
17 necessity defense.”

18 (2) A declaration from Special Agent Dean Arnold of the DEA that on June 16, 1998
19 he placed a recorded telephone call to the Marin Alliance at (415) 256-9328. An unidentified
20 female answered the telephone by stating, “Marin Alliance,” and further informed the DEA
21 agent about the requirements of becoming a new member of the Marin Alliance, and that the
22 club was open that day until “five.”

23 (3) Documentary evidence that as of August 21, 1998, the Marin Alliance maintained
24 an Internet web site which indicated that the club was engaged in activities related to
25 “medical marijuana.”

26 (4) Documentary evidence that defendant Lynnette Shaw has publicly stated that,
27 notwithstanding the May 19, 1998 Preliminary Injunction Order, “[w]e are still open seven
28 days a week,” and “[s]how me a jury who will look at our patients and not understand the

1 idea of medical marijuana being a necessity for these people.”

2 The Court’s show cause order specifically advised defendants that their response to
3 the order should include sworn declarations outlining the factual basis for any affirmative
4 defenses which they wish to offer.

5 In response to the show cause order, defendants argue (1) that plaintiff has not made a
6 prima facie showing that defendants violated the Court’s injunction, (2) that in light of the
7 evidence submitted by defendants, plaintiff has not proved by clear and convincing evidence
8 that defendants violated the Court’s injunction, and (3) in the alternative, that defendants
9 have submitted evidence sufficient to support their affirmative defenses of “joint user,”
10 “necessity,” and “substantive due process.” Defendants submit the declarations of Lynette
11 Shaw and Christopher P. M. Conrad, as well as a copy of Agent Nyfeler’s report of his May
12 27, 1998 surveillance of the Marin Alliance. They also incorporate declarations previously
13 submitted in this matter as well as the evidence submitted by co-defendant Oakland Cannabis
14 Buyers’ Cooperative.

15 To demonstrate that there is a factual dispute as to defendants’ alleged contempt, Ms.
16 Shaw attests that although Agent Nyfeler ~~claims in his report~~ to have observed individuals
17 coming in and out of the Marin Alliance located at 6 Old School Street Plaza, Suite 210, in
18 Fairfax California, the Marin Alliance is located at 6 School Street Plaza, Suite 215. She
19 further declares that the building in which the Marin Alliance is located is two stories and
20 houses at least eight different tenants, and that at least four other businesses are located on
21 the fourth floor with the defendant Marin Alliance. She states that because smoking is
22 banned in the building, persons on the second floor who desire to smoke cigarettes usually do
23 so at an outdoor mezzanine located approximately twelve feet north of the Marin Alliance’s
24 front door, but that no cannabis smoking is permitted anywhere in the vicinity of the
25 building.

26 Defendants also offered new evidence to support their affirmative defenses. Ms.
27 Shaw testifies generally about the requirements for membership in the Marin Alliance. Mr.
28 Conrad has authored a book entitled Hemp for Health. He declares that based upon his

1 research and review of scientific studies and relevant evidence, “there is virtually no
2 scientific basis for the placement of cannabis in Schedule I.” Defendants have not submitted
3 declarations from any Marin Alliance patients.

4 Plaintiff subsequently moved in limine to exclude defendants’ affirmative defenses.
5 The Court held a hearing on the plaintiff’s motions in limine and the Order to Show Cause on
6 October 5, 1998 and thereafter took the matter under submission.

7 DISCUSSION

8 I. THE MOTIONS IN LIMINE.

9 A. The Legal Standard.

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

19 B. The “Joint User” Defense.

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

1 Defendants here, unlike the defendants in Swiderski, have not offered any evidence of
2 the joint purchase of the marijuana they are alleged to have distributed on May 27, 1998.
3 Defendants contend nonetheless that because the Marin Alliance is run as a cooperative the
4 marijuana is effectively purchased by all members simultaneously and thus they are entitled
5 to a Swiderski instruction. The defendants made the same argument, based on a proffer of
6 essentially the same facts, in opposition to plaintiff's motion for a preliminary injunction.

7 The Court declines to extend Swiderski to the facts as presented by defendants'
8 proffer, namely a medical marijuana cooperative. As the Court has previously noted,
9 Swiderski involved a simultaneous purchase by a husband and wife who testified they
10 intended to use the controlled substance immediately. Applying Swiderski to a medical
11 marijuana cooperative would extend Swiderski to a situation in which the controlled
12 substance is not literally purchased simultaneously for immediate consumption. See United
13 States v. Cannabis Cultivators Club, 5 F.Supp.2d 1086, 1101 (N.D. Cal. 1998). In light of
14 the fact that Swiderski has never been so extended, and in light of the fact that it has not been
15 adopted by the Ninth Circuit, the Court concludes that such a defense is not available on the
16 facts proffered by defendants as a matter of law. Accordingly, defendants are precluded
17 from offering evidence and argument in support of a "joint user" defense at their contempt
18 trial.

19 C. The Necessity Defense.

20 To be entitled to a jury instruction on the defense of necessity, defendants must offer
21 evidence (1) that they were faced with a choice of evils and chose the lesser evil; (2) they
22 acted to prevent imminent harm; (3) they reasonably anticipated a direct causal relationship
23 between their conduct and the harm to be averted; and (4) that there were no legal
24 alternatives to violating the law. See United States v. Aguilar, 883 F.2d 662, 693 (9th Cir.
25 1989). Defendants have produced evidence that marijuana has a medical benefit to many
26 persons and that for some persons marijuana is the only drug that can alleviate their pain and
27 other debilitating symptoms. They also have submitted evidence that they carefully screen
28 their members to ensure that they have a physician's recommendation for marijuana use.

1 Defendants, however, have not produced any evidence that the particular persons to whom
2 they distributed marijuana on May 27, 1998 (if, indeed, they did) had a legal necessity for
3 marijuana.

4 Plaintiff argues that a necessity defense based upon a medical need for marijuana is
5 never available under any circumstances as a defense to a violation of the Controlled
6 Substances Act because Congress implicitly rejected such a defense by placing marijuana in
7 Schedule I. The Court need not address this issue, however, because it concludes that
8 defendants have failed to proffer sufficient evidence to support a defense of necessity as a
9 matter of law.

10 In Aguilar, the Ninth Circuit considered a necessity defense offer of proof similar to
11 that offered by defendants here. The Aguilar defendants were charged with violations of the
12 immigration laws, arising from their providing sanctuary to Central American refugees.

13 With respect to the specificity required of a necessity offer of proof, the court held:

14 We also doubt the sufficiency of the proffer to establish imminent harm. The
15 offer fails to specify that the particular aliens assisted were in danger of
16 imminent harm. Instead, it refers to general atrocities committed by
17 Salvadoran, Guatemalan, and Mexican authorities. The only indication that
18 appellants intended to show that the aliens involved in this action faced
19 imminent harm was their proffer that they adopted a process to screen aliens in
20 order to assure themselves that those helped actually were in danger. This
21 allegation fails for lack of specificity.

22 Id. at 692 n.28 (emphasis added). Defendants' proffer here likewise fails to specify that the
23 particular Marin Alliance members to whom defendants provided marijuana on May 27,
24 1998 were in danger of imminent harm. As the Court has previously held in this lawsuit, for
25 the necessity defense to be available "defendants would have to prove that each and every
26 patient to whom it provides cannabis is in danger of imminent harm; that the cannabis will
27 alleviate the harm for that particular patient; and that the patient had no other alternatives, for
28 example, that no other legal drug could have reasonably averted the harm." United States v.
Cannabis Cultivators Club, 5 F.Supp.2d 1086, 1102 (N.D. Cal. 1998) (emphasis added).

Defendants have not even attempted to offer such proof. Instead, defendants offer
evidence that they carefully screen their members to ensure that each member has a
legitimate medical need for marijuana. In Aguilar, however, the Ninth Circuit held that such

1 a proffer fails for lack of specificity because it does not prove that the particular persons
2 whom defendants assisted were as a matter of fact in danger of imminent harm. See Aguilar,
3 883 F.2d at 692 n.28.

4 Defendants argue that they cannot make their proffer more specific because plaintiff
5 failed to identify the specific persons to whom plaintiff alleges defendants distributed
6 marijuana. The Order to Show Cause, however, was limited to a single day -- May 27, 1998
7 -- and plaintiff's evidence of a government agent's personal observation of persons entering
8 and exiting the Marin Alliance was limited to a two-hour period during that day. Thus, there
9 are particular transactions at issue -- at most, the marijuana distributions that occurred on
10 May 27, 1998. If defendants did not distribute marijuana on that day they could offer
11 evidence that they did not. If they did distribute, such distribution violated the Controlled
12 Substances Act and the Court's May 19, 1998 order enjoining them from violating that Act.
13 See Cannabis Cultivators Club, 5 F.Supp.2d at 1100 (holding that the Controlled Substances
14 Act "does not exempt the distribution of marijuana to seriously ill persons for their personal
15 medical use"). If they believe their violations of the injunction are excused by the defense of
16 necessity, it is incumbent upon defendants to come forward with specific evidence to support
17 their defense as to each and every distribution made on May 27, 1998.

18 At oral argument defendants' attorney represented that defendants could not identify
19 the persons to whom they distributed marijuana on May 27 (without admitting that they had)
20 because at that time defendants had removed the Marin Alliance's records from the premises
21 because they feared a government raid. It cannot be the law, however, that a defendant's
22 burden with respect to the specificity of the proffer required to support a defense of necessity
23 is inversely related to the defendant's amount of knowledge of to whom and when it
24 distributed marijuana. Necessity is an affirmative defense and defendants are required to
25 come forward with the facts to support such a defense. They have not done so here with the
26 required specificity. Accordingly, defendants are precluded from offering evidence and
27 argument as to a necessity defense at their contempt trial.

28 //

1 D. Substantive Due Process.

2 Defendants contend that the Controlled Substances Act is unconstitutional as applied
3 to the distribution of marijuana for medical purposes because there is no rational basis for
4 classifying marijuana as a Schedule I drug under 21 U.S.C. § 812. In support of their
5 argument, defendants submit evidence of the medical benefits of marijuana for many
6 persons. As a preliminary matter, since defendants' rational basis argument is a challenge to
7 the classification of marijuana as a whole, it is an argument defendants could have made in
8 opposition to entry of the order they are now alleged to have violated. Nonetheless, the
9 Court has considered defendants' argument and evidence and concludes that it does not have
10 jurisdiction to decide if the classification of marijuana as a Schedule I substance is irrational.

11 As the Court has previously noted:

12 [T]he Controlled Substances Act established a comprehensive regulatory
13 scheme which placed controlled substances in one of five "Schedules"
14 depending on each substance's potential for abuse, the extent to which each
15 may lead to psychological or physical dependence, and whether each has a
16 currently accepted medical use in the United States. See 21 U.S.C. § 812(b).
17 Congress determined that "Schedule I" substances have a "high potential for
18 abuse," "no currently accepted medical use in treatment in the United States,"
19 and a lack of accepted "safety for use of the drug or substance under medical
20 supervision." 21 U.S.C. § 812(b)(1). Schedule I substances are strictly
21 regulated; no physician may dispense any Schedule I controlled substance to
22 any patient outside of a strictly controlled research project registered with the
23 DEA, and approved by the Secretary of Health and Human Services, acting
24 through the Food and Drug Administration ("FDA"). See 21 U.S.C. § 823(f).
25 Congress placed marijuana in Schedule I at the time it passed the Controlled
26 Substances Act and its designation has not changed since then. See 21 U.S.C.
27 § 812(c)(10).

28 Cannabis Cultivators Club, 5 F.Supp.2d at 1092.

 When it enacted the Controlled Substances Act, Congress also established a statutory
framework under which controlled substances may be rescheduled or removed from the
schedules all together. See 21 U.S.C. § 811(a). Under this statutory framework, the
Attorney General may by rule transfer a substance between schedules or remove a substance
from the schedules all together. See *id.* § 811(a). In addition, any interested party can file a
petition with the Attorney General to have substance, including marijuana, rescheduled or
removed from the schedules. See *id.* The petitioner may appeal a decision not to reschedule
a substance to the courts of appeal. See 21 U.S.C. § 877; see also Alliance for Cannabis

1 Therapeutics v. Drug Enforcement Admin., 15 F.3d 1131, 1137 (D.C. Cir. 1994) (upholding
2 decision not to reschedule marijuana). Review of the Attorney General's decision as to the
3 classification of a controlled substance is limited to the District of Columbia Court of
4 Appeals or the circuit in which petitioner's place of business is located. See 21 U.S.C. § 877.
5 A district court thus does not have jurisdiction to consider a challenge to an Attorney
6 General's refusal to reschedule a controlled substance. See National Organization For The
7 Reform Of Marijuana Laws (NORML) v. Bell, 488 F.Supp. 123, 141 n.43 (D.D.C. 1980).
8 The findings of fact of the Attorney General are conclusive if supported by substantial
9 evidence. See 21 U.S.C. § 877.

10 In light of the statutory framework described above, the Court concludes that it does
11 not have jurisdiction to decide if there is a rational basis for the classification of marijuana as
12 a Schedule I substance. Defendants do not challenge the procedure for rescheduling
13 substances. Instead, defendants contend that their evidence shows that marijuana does not fit
14 the requirements of a Schedule I substance and that therefore there is no rational basis for
15 classifying marijuana as a Schedule I substance. Thus, their rational basis challenge is in
16 effect an attack on the Attorney General's failure to reschedule marijuana. Congress has
17 stated that the courts of appeal -- not district courts -- have exclusive jurisdiction to
18 determine the propriety of the Attorney General's decision. Accordingly, this Court does not
19 have jurisdiction to decide if there is a rational basis for classifying marijuana as a Schedule I
20 substance. To hold otherwise would mean that in every prosecution under the Controlled
21 Substances Act in which a defendant challenges the factual basis for the classification of the
22 substance at issue, the district court would be required to consider evidence and resolve
23 factual disputes as to whether a substance fits within the requirements of one schedule or
24 another. Congress has stated that the Attorney General, and then the courts of appeal -- not
25 the district courts -- are to make such determinations.

26 **II. THE CONTEMPT PROCEEDINGS.**

27 The Court preliminarily enjoined defendants from violating the Controlled Substances
28 Act pursuant to 21 U.S.C. section 882(a). As this Court has previously noted, 21 U.S.C.

1 section 882(b) provides that “[i]n case of an alleged violation of an injunction or restraining
2 order issued under this section, trial shall, upon demand of the accused, be by jury in
3 accordance with the Federal Rules of Civil Procedure.” Plaintiff nonetheless argues that the
4 Court should find defendants in contempt without a jury trial because plaintiff’s evidence of
5 defendants’ violation of the Court’s injunction is uncontroverted.

6 In the Ninth Circuit, a civil contempt proceeding is a trial within the meaning of
7 Federal Rule of Civil Procedure 43(a), rather than a hearing on a motion within the meaning
8 of Rule 43(e). See Hoffman v. Beer Drivers and Salesmen’s Local Union No. 888, 536 F.2d
9 1268, 1277 (9th Cir. 1976). A trial with live testimony, however, is not always required
10 before contempt sanctions may be issued. In Peterson v. Highland Music, Inc., 140 F.3d
11 1313 (9th Cir. 1998), petition for cert. filed 9/14/1998, for example, the district court
12 commenced contempt proceedings by issuing an order to show cause. The court then had the
13 parties file affidavits and extensively brief the relevant issues. The court did not, however,
14 hold an evidentiary hearing (or trial) with live testimony. Instead, the district court issued its
15 contempt sanctions at the end of the hearing on the order to show cause. See id. at 1324.

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

22 In this case defendants have submitted evidence to controvert plaintiff’s declarations,
23 even though the Court has precluded defendants’ affirmative defenses. At a minimum, there
24 is a dispute as to whether the government agent saw anyone enter or leave the Marin
25 Alliance. The agent’s report specifies that he observed people coming and going from the
26 Marin Alliance located in Suite 210. The defendants have offered evidence
27 that the Marin Alliance is located in Suite 215. Moreover, defendants have also offered
28 evidence that no cannabis smoking is permitted anywhere in the vicinity of the building, and

1 that the area in which the agent observed persons smoking what appeared to be marijuana is
2 the area where all persons on the second floor, including visitors and employees of other
3 building tenants, smoke tobacco cigarettes since smoking is prohibited indoors.
4 Plaintiff cites Baxter v. Palmigiano, 425 U.S. 308, 319 (1976), for the proposition that
5 defendants' failure to deny that they distributed marijuana or used the premises for the
6 purpose of distributing marijuana amounts to an evidentiary admission that they violated the
7 injunction. See also Watson v. Perry, 918 F.Supp. 1403, 1415-16 (W.D. Wash. 1996)
8 (following the "well-recognized" principle that "adverse inferences may properly be drawn
9 from silence in civil cases"), aff'd, 124 F.3d 1124 (9th Cir. 1997). These cases merely hold
10 that it does not violate due process for a trier of fact to draw an adverse inference based upon
11 a party's silence. That inference, however, is an inference which may be drawn by the trier
12 of fact. Under 21 U.S.C. section 882(b), the trier of fact is a jury, not this Court.

13 **CONCLUSION**

14 For the foregoing reasons, plaintiff's motions to preclude defendants' affirmative
15 defenses of "joint user," "necessity," and "substantive due process," are GRANTED. The
16 Court further orders that a jury will decide whether defendants violated the Court's May 19,
17 1998 injunction by distributing marijuana or by using the premises of 6 School Street Plaza,
18 Fairfax, California, for the purpose of distributing marijuana, on May 27, 1998. The parties
19 are ordered to appear in Courtroom 8 on Wednesday, October 21, 1998 at 2:30 p.m. to set a
20 trial date.

21 IT IS SO ORDERED.

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23 Dated: October B, 1998

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26 CHARLES R. BREYER
27 UNITED STATES DISTRICT JUDGE
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FILED
DEC 03 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 IN CASE NO. 98-00086 (Marin
Alliance for Medical Marijuana)

Now before the Court is defendants' motion for reconsideration of the Court's October 13, 1998 Order denying defendants' motion to dismiss. In particular, defendants ask the Court to reconsider its decision denying defendants' "rational basis" challenge to the Controlled Substances Act's prohibition on the manufacture and distribution of marijuana on the ground that the Court does not have jurisdiction to hear such a challenge. After carefully considering the papers submitted by the parties, the motion for reconsideration is DENIED.

To the extent the Court has jurisdiction to hear defendants' rational basis challenge, the Court must nevertheless reject defendants' argument because the Ninth Circuit has previously determined that the Controlled Substances Act's restrictions on the manufacture and distribution of marijuana are rational. See United States v. Miroyan, 577 F.2d 489, 495

For the Northern District of California

1 (9th Cir. 1978). Indeed, the Mirovan court stated that it “need not again engage in the task of
 2 passing judgment on Congress’ legislative assessment of marijuana. As we recently
 3 declared, ‘[t]he constitutionality of the marijuana laws has been settled adversely to [the
 4 defendant] in this circuit.’” Id.

5 Since the Ninth Circuit, and indeed every Circuit that has addressed the issue, has
 6 held that the classification of marijuana as a Schedule I Controlled Substance is rational and
 7 therefore constitutional, defendants’ proffered evidence on the medical benefits of marijuana
 8 is an argument that in light of the scientific evidence available today, the continuing
 9 classification of marijuana as a Schedule I drug is irrational; that is, that the government does
 10 not presently have a legitimate interest in prohibiting the medical use of marijuana.

11 No matter how defendants frame their argument, however, it is in essence an
 12 argument that this Court should reclassify marijuana because there is no substantial evidence
 13 to support its current classification. As the Court stated in its October 13, 1998 Order, when
 14 Congress enacted the Controlled Substances Act it

15 established a statutory framework under which controlled substances may be
 16 rescheduled or removed from the schedules all together. See 21 U.S.C. §
 17 811(a). Under this statutory framework, the Attorney General may by rule
 18 transfer a substance between schedules or remove a substance from the
 19 schedules all together. See id. § 811(a). In addition, any interested party can
 20 file a petition with the Attorney General to have substance, including
 21 marijuana, rescheduled or removed from the schedules. See id. The petitioner
 22 may appeal a decision not to reschedule a substance to the courts of appeal.
 23 See 21 U.S.C. § 877; see also Alliance for Cannabis Therapeutics v. Drug
 24 Enforcement Admin., 15 F.3d 1131, 1137 (D.C. Cir. 1994) (upholding
 25 decision not to reschedule marijuana). Review of the Attorney General’s
 26 decision as to the classification of a controlled substance is limited to the
 27 District of Columbia Court of Appeals or the circuit in which petitioner’s place
 28 of business is located. See 21 U.S.C. § 877.


23 October 13 Order at 8-9. Thus, Congress gave the Attorney General the exclusive authority
 24 to determine the reclassification of marijuana in the first instance, with appeal to the Court of
 25 Appeals. As the Seventh Circuit has held, “[t]he Act authorizes the Attorney General to
 26 reclassify a drug if presented with new scientific evidence. . . . We agree that this
 27 mechanism, and not the judiciary, is the appropriate means by which defendant should
 28 challenge Congress’ classification of marijuana as a Schedule I drug.” United States v.
Greene, 892 F.2d 453, 455 (7th Cir. 1989); see also United States v. Burton, 894 F.2d 188,

DISTRICT COURT
 For the Northern District
 California

1 191 (6th Cir. 1990) ("it has been repeatedly determined, and correctly so, that
 2 reclassification is clearly a task for the legislature and the attorney general and not a judicial
 3 one"); United States v. Wables, 731 F.2d 440, 450 ("we hold that the proper statutory
 4 classification of marijuana is an issue that is reserved to the judgment of Congress and to the
 5 discretion of the Attorney General"). Accordingly, defendants' motion for reconsideration is
 6 DENIED.

7 IT IS SO ORDERED.

8 Dated: December 3, 1998


 CHARLES R. BREYER
 UNITED STATES DISTRICT JUDGE

United States District Court
 For the Northern District
 of California

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FILED

MAY 03 2002

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.

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

MEMORANDUM AND ORDER

AND RELATED ACTIONS

In February 1998, the government filed the above-related lawsuits alleging that defendants manufacture and distribute marijuana in violation of 21 U.S.C. section 841(a)(1), among other statutes. The government seeks an injunction pursuant to 21 U.S.C. section 882(a) permanently enjoining defendants' conduct. Now before the Court is the government's motion for summary judgment and entry of the permanent injunction. Defendants move to dissolve the preliminary injunction. This Memorandum and Order addresses the government's motion for summary judgment. The issue is whether there is a genuine dispute as to defendants' violation of the Controlled Substances Act ("CSA") in 1997.

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PROCEDURAL HISTORY

The government originally filed suit against six marijuana distribution clubs and various individuals associated with those clubs. One of the clubs, Flower Therapy Medical Marijuana Club, voluntarily ceased operations. Accordingly, the Court dismissed that case (98-0089) without prejudice.

The Court subsequently granted the government's motion for a preliminary injunction in the remaining cases on the ground the government had demonstrated a likelihood of success on the merits and irreparable harm. See United States v. Cannabis Cultivator's Club, 5 F.Supp.2d 1086 (N.D. Cal. 1998). Defendants unsuccessfully moved the Court to modify the preliminary injunction to exclude distributions of marijuana that are medically necessary. After the Ninth Circuit ruled that the medical necessity defense is legally cognizable and should have been considered in the district court, the Supreme Court granted certiorari. The Supreme Court reversed and held that medical necessity is not a defense to manufacturing and distributing marijuana. United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 494-95 (2001).

The government now moves for summary judgment in the remaining cases: 98-0085 (Cannabis Cultivator's Club and Dennis Peron ("CCC")); 98-0086 (Marin Alliance for Medical Marijuana and Lynette Shaw) ("Marin Alliance"); 98-0087(Ukiah Cannabis Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman) ("Ukiah Club"), 98-0088 (Oakland Cannabis Buyers' Cooperative and Jeffrey Jones) ("OCBC"), and 98-245 (Santa Cruz Buyers' Club) ("Santa Cruz Club"). The OCBC defendants filed a written opposition to the government's motion, in which the Marin Alliance, Ukiah Club and CCC defendants joined. The Santa Cruz Club has not filed an opposition to the government's motion nor joined in the OCBC's opposition.

THE GOVERNMENT'S EVIDENCE

In support of its motion for summary judgment, the government relies on the evidence it submitted in support of its motion for a preliminary injunction. This evidence consists

1 primarily of the affidavits of undercover agents who purchased marijuana from the
2 defendants in 1997. The evidence as to each of the clubs is summarized below.

3 **1. CCC (98-0085)**

4 The government has submitted the affidavits of Drug Enforcement Agency ("DEA")
5 agents who purchased marijuana from the CCC on May 21 1997, June 20, 1997, August 6,
6 1997, September 12, 1997, October 24, 1997, and November 5, 1997. For example, Special
7 Agent Brian Nehring declares that on May 21, 1997 he went to the Cannabis Cultivator's
8 Club located at 1444 Market Street in San Francisco, California. He brought with him a
9 falsified physician statement stating that he suffered from "Post Traumatic Stress Disorder."
10 At the Club he was asked to fill out a form, his physician statement was examined, and he
11 was issued a membership card. He was then directed to the third floor, which was a room
12 with two sales counters. One of the counters was staffed by 4-5 persons, and there were
13 several menu boards on the wall listing grades of marijuana with prices ranging from \$25 to
14 \$90 per one-eighth ounce. He paid \$25 for one-eighth ounce of what the Club identified as
15 Mexican-grown marijuana. Senior Forensic Chemist Phyllis E. Quinn has submitted an
16 affidavit attesting that the substances purchased by Nehring and the other undercover agents
17 are marijuana.

18 **2. Ukiah Club (98-0087)**

19 The government has submitted the affidavits of undercover agents who purchased
20 marijuana from the Ukiah Club on June 5, 1997, June 30, 1997, August 5, 1997, September
21 9, 1997, October 24, 1997, and November 14, 1997. For example, Special Agent Bill
22 Nyfeler attests that on June 30, 1997 he went to the Ukiah Club located at the Forks Theater,
23 40A Pallini Lane, Ukiah, California. He brought with him a Ukiah Club membership card
24 belonging to Special Agent Nehring, and a "Primary Caregiver" form. When he entered the
25 Club, an unidentified man examined the membership card and Nyfeler's identification and
26 noted that they did not match. Nyfeler explained he was a primary caregiver and provided
27 the man with the form. An adult female identified as "Cherri" then asked Nyfeler about his
28 membership status. Nyfeler again explained he was a primary caregiver. After Nyfeler

1 signed the membership card in Cherri's presence, Nyfeler went to the sales counter and paid
2 \$25 for what was identified as Mexican-grown marijuana. The government has again
3 submitted the affidavit of Senior Forensic Chemist, Phyllis E. Quinn who attests that the
4 substances purchased at the Club were marijuana.

5 **3. OCBC (98-0088)**

6 The government has submitted the affidavits of undercover agents who purchased
7 marijuana from the OCBC on May 19, 1997, June 23, 1997, August 8, 1997, and October 22,
8 1997. Senior Forensic Chemist, Phyllis E. Quinn examined the substances purchased at the
9 Club and confirms they were marijuana. The undercover agents also observed marijuana
10 plants being grown in the OCBC.

11 The government also relies on the evidence submitted in support of its motion for civil
12 contempt. After the Court issued its preliminary injunction, the OCBC held a press
13 conference at the Club during which it distributed marijuana in front of television cameras.
14 See October 13, 1998 Order of Contempt in 98-0088; see also Oakland Cannabis Buyers'
15 Cooperative, 532 U.S. at 487 ("The Cooperative did not appeal the injunction but instead
16 openly violated it by distributing marijuana to numerous persons.").

17 **4. Marin Alliance (98-0086)**

18 The government has submitted the affidavits of undercover agents who purchased
19 marijuana from the Marin Alliance on June 2, 1997, June 30, 1997, August 5, 1997,
20 September 9, 1997, and October 24, 1997. Senior Forensic Chemist Phyllis E. Quinn
21 examined the substances purchased at the Club and confirms they were marijuana.

22 For example, Special Agent Deborah Muusers attests that on October 24, 1997, she
23 went to the Marin Alliance located at 6 School Street Plaza, Suite 210, in Fairfax, California
24 and brought with her a phony physician statement which stated that Muuser suffered from
25 "menstrual cramps." A person who identified himself as Ken asked to see Muuser's
26 identification and physician's statement. He then asked her to fill out some forms. She
27 listed "menstrual cramps" as the reason she wished to purchase marijuana. After waiting
28 approximately 15 minutes, Muuser was advised that she had a provisional membership.

1 Muuser then entered a room where a person identified as "Rob" was seated. Rob
2 pointed to a menu board with various prices that ranged from \$40 for low grade and "Thai"
3 marijuana to \$54 for the various high grades. Muuser purchased one-eighth ounce of "82J"
4 for \$65.00.

5 **5. Santa Cruz Club (98-0245)**

6 The government has submitted the affidavits of undercover agents who purchased
7 marijuana from the Santa Cruz Club, located at 201 Maple Street, Santa Cruz, California, on
8 May 19, 1997, June 23, 1997, August 8, 1997, September 10, 1997, October 24, 1997, and
9 November 5, 1997. Senior Forensic Chemist, Phyllis E. Quinn examined the substances
10 purchased at the Club and confirms they were marijuana.

11 **DISCUSSION**

12 **I. The Motion For Summary Judgment**

13 **A. Summary Judgment Standard**

14 Summary judgment is proper when "the pleadings, depositions, answers to
15 interrogatories, and admissions on file, together with the affidavits, if any, show that there is
16 no genuine issue as to any material fact and that the moving party is entitled to a judgment as
17 a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" only if there is a sufficient
18 evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a
19 dispute is "material" only if it could affect the outcome of the suit under governing law. See
20 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A principal purpose of the
21 summary judgment procedure "is to isolate and dispose of factually unsupported claims."
22 Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). "Where the record taken as a whole
23 could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine
24 issue for trial.'" Matsushita Elec. Ind. Co. v. Zenith Radio, 475 U.S. 574, 587 (1986).

25 "In considering a motion for summary judgment, the court may not weigh the
26 evidence or make credibility determinations, and is required to draw all reasonable
27 inferences in a light most favorable to the non-moving party." Freeman v. Arpaio, 125 F.3d
28 732, 735 (9th Cir. 1997). An inference may be drawn in favor of the non-moving party,

1 however, only if the inference is “rational” or “reasonable” under the governing substantive
2 law. See Matsushita, 477 U.S. at 588.

3 **B. Defendants’ Arguments**

4 Defendants do not directly challenge the government’s evidence through submission
5 of their own evidence; that is, they do not offer any evidence suggesting that they did not
6 distribute marijuana on the dates alleged by the government. Instead, they make various
7 legal arguments, including a challenge to the sufficiency of the government’s evidence.

8 **1. The sufficiency of the government’s evidence**

9 Defendants first contend the government cannot base its motion for summary
10 judgment on evidence submitted in support of the motion for a preliminary injunction.
11 Defendants do not cite any case or rule which supports this proposition. This is unsurprising
12 as the federal rules do not require a party to re-submit evidence already filed in connection
13 with a motion for a preliminary injunction. See Air Line Pilots Ass’n., Inc. v. Alaska
14 Airlines, Inc., 898 F.2d 1393, 1397 n.4 (9th Cir. 1990) (“A district court might also convert a
15 decision on a preliminary injunction into a final disposition of the merits by granting
16 summary judgment on the basis of the factual record available at the preliminary injunction
17 stage.”).

18 They next argue the government agents’ affidavits are inadmissible and have
19 submitted a “Separate Statement Of Objections.” In sum, they claim the agents “entrapped”
20 defendants into distributing marijuana because defendants “were not predisposed to
21 providing cannabis to persons without the proper authorization.” Since the Supreme Court
22 has unanimously and definitively ruled that it is unlawful to distribute marijuana regardless
23 of the medical need of the recipient, see Oakland Cannabis Buyers’ Cooperative, 532 U.S. at
24 494-95, any “proper authorization” is irrelevant. With or without medical authorization the
25 distribution of marijuana is illegal under federal law. Defendants’ other objections are
26 equally without merit. The declarations were made on the basis of personal knowledge and
27 are admissible.

28 Finally, defendants move to continue the summary judgment motion pursuant to

1 Federal Rule of Civil Procedure Rule 56(f) to permit them to conduct discovery. They seek
2 to depose the agents as well as discover evidence of the government's "blocking" research
3 into the medical benefits of marijuana. "Federal Rule of Civil Procedure 56(f) provides that
4 if a party opposing summary judgment demonstrates a need for further discovery in order to
5 obtain facts essential to justify the party's opposition, the trial court may deny the motion for
6 summary judgment or continue the hearing to allow for such discovery. In making a Rule
7 56(f) motion, a party opposing summary judgment "must make clear what information is
8 sought and how it would preclude summary judgment." Margolis v. Ryan, 140 F.3d 850,
9 853 (9th Cir. 1998) (quoting Garrett v. City and County of San Francisco, 818 F.2d 1515,
10 1518 (9th Cir.1987)).

11 Defendants have not met their Rule 56(f) burden. If they did not sell marijuana, they
12 are in the possession of such evidence, namely, declarations stating that they did not sell any
13 marijuana to the undercover agents on the particular dates. Moreover, they have not offered
14 any explanation as to why the deposition of the agents would lead to evidence precluding
15 summary judgment; for example, they have not explained why the agents' personal
16 recollection of buying marijuana is suspect, especially given their failure to offer any
17 evidence suggesting that the agents did not in fact purchase marijuana from defendants. The
18 Court is also unpersuaded that discovery into the government's history with respect to
19 marijuana research will produce evidence legally relevant to the issues presented by the
20 government's motion for summary judgment.

21 2. Defendants' legal defenses

22 Most of the legal defenses raised by defendants were made in opposition to the
23 motion for preliminary injunction or in connection with other motions in these related
24 actions. The Court will address the merits of such defenses to the extent defendants offer
25 argument or evidence that was not previously rejected by the Court.

26 a. 21 U.S.C. section 885(d) immunity

27 Defendants repeat their contention that they are entitled to immunity under section
28 885(d), a statute intended to provide immunity for undercover law enforcement operations.

1 The Court previously rejected this argument, see Order Re: Motion To Dismiss In Case No.
2 98-0088 (Sep. 1998), and defendants offer nothing new.

3 **b. The joint user and ultimate user defenses**

4 Defendants renew their “joint user” defense under United States v. Swiderski, 548
5 F.2d 445 (2d Cir. 1977), and their related “ultimate user” defense. The Court previously
6 rejected these arguments, see Cannabis Cultivator’s Club, 5 F.Supp.2d at 1100-01, and
7 defendants have not offered any new evidence or argument. Based on the evidence before
8 the Court, no reasonable trier of fact could find that defendants’ sale of marijuana was legal
9 based on these defenses. The sale of marijuana to the undercover agents does not, under any
10 reasonable interpretation of the law, fall within the Swiderski exception to distribution.

11 **c. Substantive due process**

12 The Court previously rejected defendants’ argument that the CSA as applied to their
13 distribution of medical marijuana violates their substantive due process rights. See Cannabis
14 Cultivator’s Club, 5 F.Supp.2d at 1102-03. The Court concluded that defendants had not
15 established that they have a fundamental right to distribute medical marijuana. In their
16 opposition to summary judgment defendants still have not established such a fundamental
17 right; instead, they assert that the persons to whom they distribute marijuana have a
18 fundamental right to treat themselves with medical marijuana. Again, the Court previously
19 rejected this argument with respect to the intervener club members. See United States v.
20 Cannabis Cultivator’s Club, 1999 WL 111893 (N.D. Cal. Feb. 25, 1999). Moreover,
21 defendants have not established that they have standing to assert that a judgment in the
22 government’s favor against defendants would violate the fundamental rights of the non-
23 defendant club members, see 5 F.Supp.2d at 1103; indeed, in Oakland Cannabis Buyer’s
24 Cooperative Justice Stevens noted that the clubs cannot assert a necessity defense based on
25 the club members’ suffering because it is the club members, not the clubs themselves, that
26 face the choice of evils. Oakland Cannabis Buyer’s Cooperative, 532 U.S. at 500 n.1
27 (Stevens, J., concurring).

28 Defendants’ contention that the CSA as applied to them violates their Due Process

1 rights under a rational-basis review also does not defeat summary judgment. Under rational-
2 basis review, the Court must presume the statute is valid and uphold it “if it is rationally
3 related to a legitimate government interest.” Rodriguez v. Cook, 169 F.3d 1176, 1181 (9th
4 Cir. 1999).

5 The statute at issue here--the CSA--places drugs into five schedules, which impose
6 different restrictions on access to the drugs. Congress placed marijuana in Schedule I, the
7 most restrictive schedule. A Schedule I drug (1) has a high potential for abuse, (2) has
8 no currently accepted medical use in treatment in the United States, and (3) has a lack of
9 accepted safety for use of the drug . . . under medical supervision. See 21 U.S.C. §
10 812(b)(1). The CSA permits the Attorney General “to reschedule a drug if he finds that it
11 does not meet the criteria for the schedule to which it has been assigned.” Alliance for
12 Cannabis Therapeutics v. DEA, 15 F.3d 1131, 1133 (D.C. Cir. 1994) (citing 21 U.S.C.
13 § 811(a)). The Attorney General has delegated this authority to the Administrator of the
14 DEA, who in turn has adopted guidelines for determining if a drug has currently accepted
15 medical use in the United States. Members of the public may petition the Administrator to
16 reschedule a particular drug, including marijuana. See, e.g., Alliance for Cannabis
17 Therapeutics, 15 F.3d at 1133.

18 The Court must consider this entire statutory scheme in determining whether there is a
19 rational basis for the CSA’s prohibition on the manufacture and distribution of marijuana for
20 any purpose. In light of the available statutory procedure for reviewing the appropriateness
21 of the current classification of marijuana, the Court cannot conclude that the CSA’s
22 prohibition on the distribution of marijuana is not rationally related to a legitimate
23 government purpose, namely, to limit the distribution of drugs with a high potential for
24 abuse. Defendants’ challenge to the appropriateness of the classification of marijuana must
25 be made to the DEA Administrator, not this district court. To hold otherwise would allow
26 defendants and others to make an “end run” around the process Congress implemented to
27 ensure that drugs are properly classified.

28 **C. Evidentiary hearing**

1 Defendants complain that before they are permanently enjoined from distributing
2 marijuana they should be given an evidentiary hearing on the merits of their defenses. They
3 claim that “in the two cases where Section 882 was used to enjoin criminal activity under the
4 CSA, the defendants were at least given a hearing at which they could challenge the
5 government’s evidence and present their own. See United States v. Barbacoff, 416 F.Supp.
6 606, 607 (D.D.C. 1976); United States v. Williams, 416 F.Supp. 611 (D.D.C. 1976). They
7 assert that the evidentiary hearings in those cases were held before the court granted partial
8 summary judgment in favor of the government.

9 Defendants’ reliance on these cases is misplaced. Both cases involved whether the
10 defendant pharmacists were knowingly filling forged prescriptions for controlled substances.
11 Thus, presumably there was a factual dispute as to defendants’ knowledge, and a trial-like
12 hearing was necessary to resolve that dispute. Moreover, defendants misrepresent the
13 procedural posture of the cases. In both cases the hearing with cross-examination was held
14 *after* the court granted partial summary judgment; indeed, in one of the cases, the court
15 expressly states the purpose of the hearing was to determine the penalty, that is, how much
16 the defendant would pay. Williams, 416 F.Supp. 612. Defendants have not offered any
17 evidence from which a reasonable trier of fact could conclude defendants did not distribute
18 marijuana; accordingly, no evidentiary hearing or trial is needed to resolve disputed issues of
19 fact.

20 **II. Commerce Clause**

21 “Every law enacted by Congress must be based on one or more of its powers
22 enumerated in the Constitution.” United States v. Morrison, 529 U.S. 598, 607 (2000).
23 Defendants contend neither the Commerce Clause nor any other Constitutional provision
24 gives Congress the power to prohibit their intrastate manufacture and distribution of medical
25 marijuana. Although defendants do not raise this issue as a defense to the government’s
26 motion for summary judgment, the Court will address the argument in this Memorandum.

27 In connection with the preliminary injunction motion, the Court held that Congress
28 could regulate the wholly-intrastate manufacture and distribution of marijuana under the

1 Commerce Clause. See 5 F.Supp.2d at 1096-97. Since the Court's ruling, the Supreme
2 Court held that Congress did not have Commerce Clause authority to enact the civil remedy
3 provision of the Violence Against Women Act ("VAWA"). See Morrison, 529 U.S. at 617-
4 18. Defendants claim that under Morrison federal regulation of the purely intrastate
5 manufacture and distribution of medical marijuana cannot emanate from the Commerce
6 Clause.

7 Morrison does not support defendants' argument. The civil remedy provisions of the
8 VAWA did not involve the regulation of intrastate commerce; instead, Congress attempted to
9 justify the law on the basis of the interstate commerce effects of intrastate violence against
10 women. In reaching its decision, the Morrison Court observed that "in those cases where we
11 have sustained federal regulation of intrastate activity based upon the activity's substantial
12 effects on interstate commerce, the activity in question has been some sort of economic
13 endeavor." 529 U.S. at 611. It then concluded that the civil remedy provisions of VAWA
14 could not be enacted pursuant to the Commerce Clause because

15 [g]ender-motivated crimes of violence are not, in any sense of the phrase,
16 economic activity. While we need not adopt a categorical rule against
17 aggregating the effects of any noneconomic activity in order to decide these
18 cases, thus far in our Nation's history our cases have upheld Commerce Clause
19 regulation of intrastate activity only where that activity is economic in nature.

20 Id. at 613.

21 Unlike violence, the manufacture and distribution of marijuana is economic activity;
22 indeed, the Ninth Circuit has specifically held that "drug trafficking is a commercial activity
23 which substantially affects interstate commerce." United States v. Staples, 85 F.3d 461, 463
24 (9th Cir. 1996); see also United States v. Tisor, 96 F.3d 370, 375 (9th Cir. 1996) (noting that
25 the Ninth Circuit has adopted the Eighth Circuit's reasoning that intrastate drug activity
26 affects interstate commerce . . . ; that Congress may regulate both interstate and intrastate
27 drug trafficking under the Commerce Clause, . . . and that section 841(a)(1) is a valid
28 exercise of Congress's Commerce Clause power.") (internal quotations omitted). The Court
is bound by these rulings in the absence of a subsequent Supreme Court case casting the
Ninth Circuit's holdings in doubt. As Morrison did not involve intrastate commerce, it is

1 not such a case.

2 //

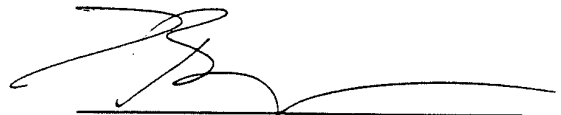
3 **CONCLUSION**

4 For the foregoing reasons, the Court concludes that based on the record before the
5 Court there is no genuine material dispute that defendants violated the CSA several times in
6 1997 by distributing marijuana and possessing marijuana with the intent to distribute.
7 Accordingly, the government's motion for summary judgment is GRANTED.

8 Having granted the government's motion, the Court must decide what remedy, if any,
9 is appropriate. The government seeks entry of a permanent injunction on the same terms as
10 the preliminary injunction. At oral argument the Court advised the parties that should the
11 Court grant the government's motion for summary judgment, it would give defendants the
12 opportunity to file further submissions with the Court concerning the likelihood of future
13 violations of the Act, and in particular, whether there is a threat that defendants, or any of
14 them, will resume their distribution activity if the Court does not enter a permanent
15 injunction. All such submissions, if any, shall be filed by May 24, 2002 and the
16 government's response, if any, shall be filed by June 7, 2002. The Court will take the matter
17 of the remedy to be imposed under submission at that time.

18 IT IS SO ORDERED.

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20 Dated: May 3, 2002



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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FILED

JUN 10 2002

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.

Nos. C 98-00085 CRB

C 98-00086 CRB

C 98-00087 CRB ✓

C 98-00088 CRB

C 98-00245 CRB

MEMORANDUM AND ORDER

AND RELATED ACTIONS

By Order dated May 3, 2000, the Court granted the government's motion for summary judgment on the ground that it is undisputed that defendants violated the Controlled Substances Act in 1997. Having determined that the government is entitled to judgment, the Court must now determine what remedy, if any, should be imposed. The government seeks a permanent injunction on the same terms as the preliminary injunction.

Standard For A Permanent Injunction

To be entitled to a permanent injunction a plaintiff must actually succeed on the merits. See Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 546 n.12 (1987). As the Court previously ruled, the government is entitled to summary judgment on its claim

1 that the clubs distributed marijuana in violation of the Controlled Substances Act.

2 The government must also show that it has no adequate legal remedy. See
3 Continental Airlines v. Intra Brokers, Inc., 24 F.3d 1099, 1102 (9th Cir. 1994). Irreparable
4 injury is one basis for showing the inadequacy of the legal remedy. See id. The Ninth
5 Circuit has held that in statutory enforcement actions, such as this, irreparable injury is
6 presumed. See Miller v. California Pacific Medical Center, 19 F.3d 449, 459 (9th Cir. 1994)
7 (en banc); see also 5 F.Supp.2d at 1103 (same). If there is no threat of future wrongful
8 conduct, however, a legal remedy will be adequate. To put it another way, the purpose
9 of a permanent injunction is not punishment but rather deterrence of future behavior. See
10 Orantes-Hernandez v. Thornburgh, 919 F.2d 549, 564 (9th Cir. 1990) (“Permanent injunctive
11 relief is warranted where . . . defendant’s past and present misconduct indicates a strong
12 likelihood of future violations.”).

13 That the government has succeeded on the merits and is entitled to a presumption of
14 an inadequate legal remedy does not require the Court to enter a permanent injunction.
15 When the United States Supreme Court reviewed the preliminary injunction order in this
16 case, it held that “[b]ecause the District Court’s use of equitable power is not textually
17 required by any ‘clear and valid legislative command,’ the court did not have to issue an
18 injunction.” 121 S.Ct. at 1721. The Court explained further that

19 the mere fact that the District Court had discretion does not suggest that the
20 District Court, when evaluating the motion to modify the injunction, could
21 consider any and all factors that might relate to the public interest or the
22 conveniences of the parties, including the medical needs of the Cooperative’s
23 patients. . . . A district court cannot, for example, override Congress’ policy
24 choice, articulated in a statute, as to what behavior should be prohibited. . . .
25 Their choice . . . is simply whether a particular means of enforcing the statute
26 should be chosen over another permissible means; their choice is not whether
27 enforcement is preferable to no enforcement at all. Consequently, when a
28 court of equity exercises its discretion, it may not consider the advantages and
disadvantages of nonenforcement of the statute, but only the advantages and
disadvantages of “employing the extraordinary remedy of injunction.” To
the extent the district court considers the public interest and the conveniences
of the parties, the court is limited to evaluating how such interest and
conveniences are affected by the selection of an injunction over other
enforcement mechanisms.

Id. at 1721-22. The Supreme Court thus held that this Court cannot decline to enter an
injunction pursuant to 21 U.S.C. section 882(d) because the Court believes seriously ill

1 individuals should be permitted to legally obtain marijuana from the clubs. The Court can
2 decline to enter a permanent injunction only if enforcement by some other means, here,
3 criminal prosecution, is more appropriate than the requested equitable relief.

4 DISCUSSION

5 The first issue is whether the government has demonstrated a threat of future unlawful
6 conduct. If not, there is no need for the Court to exercise its extraordinary equitable powers
7 for there is no conduct to deter. The government has met its burden. The clubs are still in
8 existence and their very purpose is to distribute marijuana to seriously ill patients.

9 At the beginning of this case, one of the defendant clubs, Flower Therapy, voluntarily
10 closed its doors and agreed to stop distributing marijuana. In light of its conduct and its
11 representation to the Court, the club no longer posed a threat of future unlawful conduct.
12 Accordingly, the Court dismissed the government's case against this club. In connection
13 with the motion for a permanent injunction, the Court gave all of the remaining defendant
14 clubs the opportunity to present evidence that they, too, do not pose a threat of future
15 unlawful conduct, that is, distribution of marijuana. None of the clubs came forward with
16 such evidence or even the suggestion that they would not distribute marijuana in the absence
17 of an injunction. After considering all the evidence presented by the government, the Court
18 finds that in the absence of an injunction, the defendants are likely to resume distributing
19 marijuana in violation of the Controlled Substances Act.

20 The critical issue then is whether, in light of the available criminal enforcement
21 remedy, the Court should decline to enter a permanent injunction. The government first
22 argues that because it has chosen to proceed by means of civil enforcement, the Court does
23 not have discretion to not impose the injunction; in other words, for the Court to decline to
24 issue the injunction in favor of criminal prosecution would be tantamount to declining to
25 enforce the statute at all since the government has not initiated criminal proceedings. If the
26 government is correct, however, the government--not the district court--would ultimately
27 exercise the discretion as to whether to issue the injunction; the government could limit the
28 district court's discretion by simply not initiating criminal proceedings. The Supreme Court,

1 however, specifically rejected this outcome: “the District Court in this case had discretion.”
2 Oakland Cannabis Buyer’s Cooperative, 531 U.S. at 496. “[W]ith respect to the Controlled
3 Substances Act, criminal enforcement is an alternative, and indeed the customary, means of
4 ensuring compliance with the statute. Congress’ resolution of the policy issues can be (and
5 usually is) upheld without an injunction.” Id. at 497.

6 Thus, the fact that the government has not chosen to proceed criminally does not
7 require the Court to enter a permanent injunction; rather, the Court should consider the
8 advantages and disadvantages of “employing the extraordinary remedy of injunction,” and
9 “[t]o the extent the district court considers the public interest and the conveniences of the
10 parties, the court is limited to evaluating how such interest and conveniences are affected by
11 the selection of an injunction over other enforcement mechanisms,” namely, criminal
12 prosecution. Id. at 497-98.

13 Defendants contend that the Court should not proceed with civil enforcement because
14 the procedural protections are not as great as in a criminal prosecution. For example, if the
15 government charges a defendant with violating the injunction, the defendant does not have a
16 right to a jury trial in the absence of a genuine dispute of fact, and the burden of proof is less
17 exacting; the government need only prove the violation by a preponderance of the evidence
18 rather than beyond a reasonable doubt.

19 The reduced procedural protections available in a civil proceeding might be a reason
20 to decline civil enforcement in certain circumstances. For example, if there is a genuine
21 dispute as to whether a defendant is in fact violating the law, a court might decide that
22 criminal enforcement--with its more vigorous burden of proof--is a more appropriate method
23 of enforcement. But those are not the circumstances here. Defendants do not deny that they
24 distributed marijuana; there is no genuine factual dispute as to their violation of the law.
25 Defendants simply disagree with the law.

26 Moreover, the reduced procedural protections available in a civil case reflect the far
27 less serious consequences of a judgment in favor of a plaintiff in a civil proceeding. The
28 result of the government prevailing here is that the clubs will be enjoined from distributing

1 marijuana. In a criminal case the clubs may still be shut down, but in addition, the individual
2 defendants may lose their liberty. Given the amount of marijuana distributed by the clubs,
3 the potential prison time faced by the individual defendants under the United States
4 Sentencing Guidelines is significant.¹ Furthermore, the fact that defendants were distributing
5 marijuana to seriously ill patients is not a defense. See Oakland Cannabis Buyer's
6 Cooperative, 532 U.S. at 494-95. It is thus unsurprising that at oral argument counsel for
7 defendants Marin Alliance for Medical Marijuana and Lynette Shaw stated that these
8 defendants prefer that the Court and the government proceed with a civil injunction rather
9 than criminal prosecution.

10 Defendants also argue that a civil injunction interferes with the rights of seriously ill
11 patients. A criminal prosecution of the clubs and its leaders, however, would do the same.
12 This Court cannot decline to issue the injunction in favor of non-enforcement of the statute.
13 See Oakland Cannabis Buyer's Cooperative 531 U.S. at 498 ("Courts of equity cannot, in
14 their discretion, reject the balance that Congress has struck in a statute. Their choice . . . is
15 simply whether a particular means of enforcing the statute should be chosen over another
16 permissible means; their choice is not whether enforcement is preferable to no enforcement
17 at all.").

18 CONCLUSION

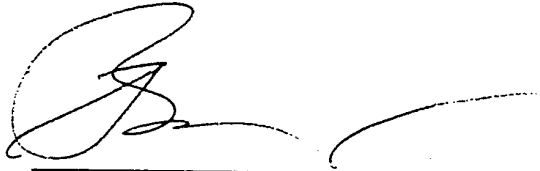
19 In light of the serious penalties faced by the individual defendants in a criminal
20 proceeding and the unavailability of a medical necessity defense, the Court concludes in its
21 discretion that civil enforcement of the Controlled Substances Act in the circumstances of
22 these related cases is appropriate. Accordingly, the Court will issue permanent injunctions in
23

24
25 ¹For example, assuming an individual defendant does not have any prior criminal history,
26 and is convicted of distributing, or aiding and abetting the distribution of, 10 kilograms of
27 marijuana, he would fall within a sentencing range of 21 to 27 months. U.S.S.G. § 2D1.1(c).
28 A conviction involving 80 kilograms of marijuana would result in a sentence of almost five
years. *Id.* Moreover, under the Controlled Substances Act certain mandatory minimum
sentences apply: a conviction involving 100 or more marijuana plants regardless of weight
carries a five-year minimum sentence, 21 U.S.C. § 841(b)(1)(B)(vii), and a conviction involving
1000 such plants requires a 10-year minimum sentence. 21 U.S.C. § 841(b)(1)(A)(vii).

1 these related actions enjoining defendants from the distribution of marijuana in violation of
2 the Controlled Substances Act.²

3
4 **IT IS SO ORDERED.**

5 Dated: June 8, 2002

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7 CHARLES R. BREYER
8 UNITED STATES DISTRICT JUDGE

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27 ²Plaintiff filed these related actions to enjoin the distribution of marijuana, not possession
28 for personal use. The issue of personal use is not before the Court and the Court declines to reach that issue.

United States District Court
for the
Northern District of California
June 12, 2002

* * CERTIFICATE OF SERVICE * *

Case Number:3:98-cv-00087

USA

vs

Ukiah Cannabis Buyer

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 12, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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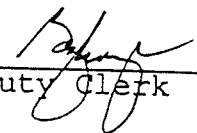
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FILED

JUN 10 2002

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,

No. C 98-00087 CRB

**JUDGMENT; PERMANENT
INJUNCTION**

v.

UKIAH CANNABIS BUYER'S CLUB,
CHERRIE LOVETT, MARVIN LEHRMAN,
and MILDRED LEHRMAN,
Defendants.

The Court having granted plaintiff's motion for summary judgment by Memorandum and Order filed May 3, 2002, and for the reasons stated in its Memorandum and Order dated June 10, 2002, judgment is hereby entered in favor of plaintiff the United States of America and against defendants Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman as follows:

1. Defendants Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman are hereby permanently enjoined from engaging in the distribution of marijuana, the possession of marijuana with the intent to distribute, or the manufacture of marijuana with the intent to distribute, in violation of 21 U.S.C. § 841(a)(1); and

2. Defendants Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman are hereby permanently enjoined from using the premises of 40A

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1 Pallini Lane, Ukiah, California for the purposes of engaging in the manufacture and
2 distribution of marijuana; and


3 3. Defendants Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman,
4 and Mildred Lehrman are hereby permanently enjoined from conspiring to violate the
5 Controlled Substances Act, 21 U.S.C. § 841(a)(1), with respect to the distribution of
6 marijuana, the manufacture of marijuana with the intent to distribute, or the possession of
7 marijuana with the intent to distribute.

8 4. It shall not be a violation of this injunction for defendants to seek and obtain
9 legal advice from their attorneys.

10 5. Pursuant to Federal Rule of Civil Procedure 65(d), this injunction shall bind
11 the defendants, their officers, agents, servants, employees, successors, and attorneys, and
12 those persons in active concert or participation with them who receive notice of the order by
13 personal service or otherwise.

14
15 **IT IS SO ORDERED.**

16
17 Dated: June 10, 2002

18 
19 CHARLES R. BREYER
20 UNITED STATES DISTRICT JUDGE
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United States District Court
for the
Northern District of California
June 12, 2002

* * CERTIFICATE OF SERVICE * *

Case Number:3:98-cv-00087

USA

vs

Ukiah Cannabis Buyer

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 12, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Richard W. Wieking, Clerk

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

FILED
JUL 29 2002
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
UKIAH CANNABIS BUYER'S CLUB,)
CHERRIE LOVETT, MARVIN)
LEHRMAN, and MILDRED LEHRMAN)
Defendants.)
_____)
AND RELATED ACTIONS.)
_____)

No. C 98-00087 CRB
[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION FOR
ENTRY OF PARTIAL
JUDGMENT PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 54(B)

Date: August 9, 2002
Time: 10:00 a.m.

Honorable Charles R. Breyer

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This matter comes before the Court on Defendants Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman's Motion for Entry of Partial Judgment Pursuant to Federal Rule of Civil Procedure 54(b) in Case No. 98-00087 CRB. Upon consideration of the foregoing and the entire record herein, and good cause appearing therefore, the Court hereby finds and certifies that all of Plaintiff's claims against Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman and Mildred Lehrman have been finally adjudicated, that such claims are severable from the remaining claims in the litigation, and that there is no just reason to delay the entry of judgment, it is hereby

ORDERED that the Defendants' Motion be, and hereby is, GRANTED, AND THE CLERK IS DIRECTED TO ENTER JUDGMENT PURSUANT TO THIS ORDER.

IT IS SO ORDERED.

Dated: July 29, 2008



HON. CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

United States District Court
for the
Northern District of California
July 29, 2002

bae

* * CERTIFICATE OF SERVICE * *

Case Number:3:98-cv-00087

USA

vs

Ukiah Cannabis Buyer

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 29, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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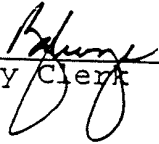
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