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FILED
SEP 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 DENYING MOTION FOR
ORDER TO SHOW CAUSE IN CASE NO.
98-00087**

This matter comes before the Court on plaintiff's Motion to Hold Non-Compliant Defendants in Civil Contempt. The United States seeks an order to show cause why the Ukiah Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman, defendants in Case No. C 98-0087 CRB, should not be held in contempt of this Court's May 19, 1998 Preliminary Injunction Order, which provides, in pertinent part:

1. Defendants Ukiah Cannabis 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 Cannabis 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 Cannabis Buyer's Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman are hereby preliminarily enjoined from conspiring to violate the

1 Controlled Substances Act, 21 U.S.C. § 841(a)(1) with respect to the manufacture or
2 distribution of marijuana, or the possession of marijuana with the intent to
manufacture and distribute marijuana

3 The United States has submitted the following evidence in support of its motion for an
4 order to show cause:¹

5 (1) On May 27, 1998, Special Agent Bill Nyfeler placed a recorded telephone call to
6 the UCBC, at (707) 462-0691, to confirm that the club was continuing to distribute
7 marijuana. An individual who identified himself as "Marvin" answered the phone and stated
8 that, although the UCBC was in receipt of an injunction, the club was still open for business.
9 "Marvin" further informed Special Agent Nyfeler of the UCBC's business hours.

10 Declaration of Special Agent Bill Nyfeler Dec. ¶ 4.

11 (2) On June 16, 1998, Special Agent Dean Arnold placed a recorded telephone call to
12 the UCBC, at (707) 462-0691, to again confirm that the club was still distributing marijuana.
13 An unidentified male answered the telephone and stated, "UCBC." Special Agent Arnold
14 asked whether the UCBC was still open for business, to which the unidentified male asked if
15 Special Agent Arnold was a member. Special Agent Arnold stated that he was not a
16 member, to which the unidentified male responded, "We are officially closed." Special
17 Agent Arnold then asked if the UCBC was accepting new members, to which the
18 unidentified male responded, "Why don't you come in and show me what you have, medical
19 papers?" Declaration of Special Agent Dean Arnold Dec. ¶ 5.

20 (3) A May 30, 1998, article entitled *Lake County struggles with pot grant use - Ukiah*
21 *pot club eviction withdrawn*, by Jennifer Poole, which appeared in the *Ukiah Daily Journal*,
22 states that, notwithstanding the Court's May 19, 1998, Preliminary Injunction Orders, the
23 UCBC is still open, and has no plans to close, and quotes defendant Marvin Lehrman as
24 saying, "We're continuing and fulfilling our mission. I don't know what's next." The article
25 further notes that defendants UCBC and Lehrman had been officially served with this
26 Court's Preliminary Injunction Order on Wednesday, May 27, 1998. Exhibit 7 to July 6,

27
28 ¹ The evidence provided by the United States was contained in sworn declarations
submitted to the Court and to the defendants.

1 1998 Declaration of Mark T. Quinlivan (“7/6 Quinlivan Dec.”).

2 (4) A June 17, 1998, article entitled *Board begins Prop 215 process - But backs away*
3 *from resolution proposed by Supervisor Peterson*, by Jennifer Poole, which appeared in the
4 *Ukiah Daily Journal*, quotes defendant Marvin Lehrman as saying, “And that’s why we’re
5 here, to supply medical marijuana to those people who need it now and who may not be alive
6 by the time the boards of supervisors and others get it together.” Exhibit 8 to 7/6 Quinlivan
7 Dec.

8 In reviewing this evidence, the Court notes that admissions of a party-opponent are
9 admissible under Rule 801(d)(2) of the Federal Rules of Evidence ““for whatever inferences
10 the trial judge [can] reasonably draw.”” United States v. Warren, 25 F.3d 890, 895 (9th Cir.
11 1994) (quoting United States v. Matlock, 415 U.S. 164, 172 (1974)). See also United States
12 v. Singleterry, 29 F.3d 733, 736 (1st Cir. 1994) (“[A] defendant’s own statements are never
13 considered to be hearsay when offered by the government; they are treated as admissions,
14 competent as evidence of guilt without any special guarantee of their trustworthiness.”).

15 Upon consideration of the moving papers, the opposition and reply thereto, argument
16 in open court, and the entire record herein, this Court finds that, based on the totality of
17 circumstances, the United States has not made a prima facie case that defendants Ukiah
18 Cannabis Buyer’s Club, Cherrie Lovett, Marvin Lehrman, and Mildred Lehrman have
19 distributed marijuana, and have used the premises of 40A Pallini Lane, Ukiah, California, for
20 the purpose of distributing marijuana, both in violation of the Court’s May 19, 1998
21 Preliminary Injunction Order. The evidence, at best, establishes that defendants intend to
22 violate the Court’s May 19, 1998 Order when the opportunity arises. Plaintiff has not
23 produced evidence sufficient for a reasonable trier of fact to find that defendants have
24 actually distributed marijuana, or used the premises of 40A Pallini Lane for the purpose of //

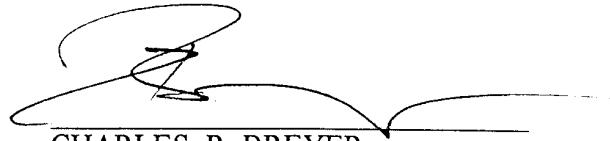
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distributing marijuana. Accordingly, plaintiff's motion for an order to show cause in Case No. 98-00087 is DENIED without prejudice.

IT IS SO ORDERED.

Dated: September 8, 1998



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE