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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,
Plaintiff,

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

v.

CANNABIS CULTIVATORS CLUB, et al.,
Defendants.

ORDER TO SHOW CAUSE IN CASE
NO. 98-0088 CRB

AND RELATED ACTIONS

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 Oakland Cannabis Buyers' Cooperative and Jeffrey Jones, defendants in Case No. C 98-0088 CRB, should not be held in contempt of this Court's May 19, 1998 Preliminary Injunction Order, which provides, in pertinent part:

1. Defendants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones 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 Oakland Cannabis Buyers' Cooperative and Jeffrey Jones are hereby preliminarily enjoined from using the premises of 1755 Broadway, Oakland, California for the purposes of engaging in the manufacture and distribution of marijuana; and

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

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

7 (1) On May 20, 1998, one day after the Court entered the Preliminary Injunction
8 Orders, defendants OCBC and Jeffrey Jones issued a press release entitled "Oakland
9 Cooperative to Openly Dispense Medical Marijuana for First Time Since Preliminary
10 Injunction - U.S. Attorney to be Notified: HIV, Multiple Sclerosis and Other Seriously Ill
11 Patients to Receive Pot at 11:00 a.m., Thursday May 21, Oakland Buyers Cannabis
12 Cooperative, 1755 Broadway, Oakland." See Exhibit 1 to July 6, 1998 Declaration of Mark
13 T. Quinlivan ("7/6 Quinlivan Dec."), which stated, in pertinent part:

14 Oakland, CA — Just hours after Federal Judge Charles Breyer signs into law a
15 preliminary injunction against six California medical marijuana clubs, Jeff Jones,
16 Director of the Oakland Cannabis Buyers Cooperative announced that he will openly
17 dispense marijuana to four seriously ill patients at 11:00 a.m. on Thursday May 21.
18 U.S. Attorney Michael Yamaguchi will be notified of the cooperative's actions, Jones
19 said.

20 "For these four patients, and others like them, medical marijuana is a medical
21 necessity," said Jones. "To deny them access would be unjust and inhumane."

22 Violation of the preliminary injunction could initiate Contempt of Court proceedings
23 against the Oakland Cooperative. A Contempt case, during which a medical necessity
24 argument would likely be made by attorneys for the cooperative, would be heard by a
25 jury who would have to reach a unanimous verdict.

26 "I'd trust a jury of Californians before federal bureaucrats," said Jones. "All the
27 evidence shows that marijuana has medical qualities and should be re-scheduled.
28 Voters in two states have already endorsed medical marijuana, and others look set to
follow. Yet the federal government refuses to consider the facts and instead is hell-
bent upon enforcing outdated marijuana laws."

29 Id. Defendant Jeffrey Jones faxed the press release to United States Attorney Michael
30 Yamaguchi. Id.

31 (2) On May 21, 1998, Special Agent Peter Ott, in an undercover capacity, entered the
32 OCBC and observed approximately fourteen sales or distributions of what appeared to be

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

1 marijuana by persons associated with the OCBC, including Jeffrey Jones, several of which
2 were made in front of news cameras. Declaration of Special Agent Peter Ott ("Ott Dec.") ¶¶
3 3-4.

4 (3) The World Wide Web site of the OCBC, which indicates that it was updated on
5 June 1 and August 12, 1998, states: "Currently, we are providing medical cannabis and other
6 services to over 1,300 members." Exhibit 3 to 7/6 Quinlivan Dec. (emphasis supplied);
7 Exhibit 1 to August 24, 1998 Declaration of Mark T. Quinlivan ("8/24 Quinlivan Dec.").
8 The Web site also includes links to this Court's May 19, 1998, Preliminary Injunction Order
9 and May 13, 1998, Memorandum and Order, demonstrating that defendants OCBC and
10 Jones were and are aware of the Preliminary Injunction Order. See Exhibit 3 to 7/6
11 Quinlivan Dec.

12 (4) On May 27, 1998, Special Agent Bill Nyfeler placed a recorded telephone call to
13 the OCBC, at (510) 832-5346, to confirm that the club was continuing to distribute
14 marijuana. Declaration of Special Agent Bill Nyfeler ("Nyfeler Dec.") ¶ 5. The individual
15 who answered the phone informed Special Agent Nyfeler that the OCBC was still open for
16 business, and told Special Agent Nyfeler the club's business hours. Id.

17 (5) On June 16, 1998, Special Agent Dean Arnold placed a recorded telephone call to
18 the OCBC, at (510) 843-5346, to again confirm that the club was still distributing marijuana.
19 Declaration of Special Agent Dean Arnold ("Arnold Dec.") ¶ 3. An unidentified male
20 answered the telephone and informed Special Agent Arnold that the OCBC was open for
21 business and was accepting new members. The unidentified male further informed Special
22 Agent Arnold about the requirements of becoming an OCBC member, the hours that the club
23 was open (11 a.m. - 1 p.m., and 5 p.m. - 7 p.m.), and the location of the OCBC, at 1755
24 Broadway Avenue, in Oakland. Id.

25 (6) In an article entitled "*Marijuana Clubs Defy Judge's Order*" by Karyn Hunt, which
26 appeared on May 22, 1998, in *AP Online*, defendant Jeffrey Jones is quoted as stating, "We
27 are not closing down. We feel what we are doing is legal and a medical necessity and we're
28 going to take it to a jury to prove that." Exhibit 2 to 7/6 Quinlivan Dec.

1 In reviewing this evidence, the Court notes that admissions of a party-opponent are
2 admissible under Rule 801(d)(2) of the Federal Rules of Evidence “for whatever inferences
3 the trial judge [can] reasonably draw.” United States v. Warren, 25 F.3d 890, 895 (9th Cir.
4 1994) (quoting United States v. Matlock, 415 U.S. 164, 172 (1974)). See also United States
5 v. Singleterry, 29 F.3d 733, 736 (1st Cir. 1994) (“[A] defendant’s own statements are never
6 considered to be hearsay when offered by the government; they are treated as admissions,
7 competent as evidence of guilt without any special guarantee of their trustworthiness.”).

8 Accordingly, upon consideration of the moving papers, the opposition and reply
9 thereto, argument in open court, and the entire record herein, this Court concludes that, based
10 on the totality of circumstances, the United States has made a prima facie case that
11 defendants Oakland Cannabis Buyers’ Cooperative and Jeffrey Jones have distributed
12 marijuana, and have used the premises of 1755 Broadway Avenue, Oakland, California, for
13 the purpose of distributing marijuana, both in violation of the Court’s May 19, 1998
14 Preliminary Injunction Order.

15 Accordingly, defendants Oakland Cannabis Buyers’ Cooperative and Jeffrey Jones are
16 hereby

17 ORDERED to show cause why they should not be held in civil contempt of the
18 Court’s May 19, 1998 Preliminary Injunction Order by distributing marijuana and by using
19 the premises of 1755 Broadway Avenue, Oakland, California, for the purpose of distributing
20 marijuana, on May 21, 1998; and it is hereby further

21 ORDERED that defendants shall have until 12:00 p.m. (Pacific Daylight Time),
22 September 14, 1998, in which to file their response to this Show Cause Order. Defendants’
23 response shall include sworn declarations outlining the factual basis for any affirmative
24 defenses which they wish to offer in response to this Show Cause Order; and it is hereby
25 further

26 ORDERED that the United States shall have until 12:00 p.m. (Pacific Daylight Time),
27 September 21, 1998, in which to file a motion in limine regarding any defenses or evidence
28 which the defendants might raise in their response; and it is hereby further

1 ORDERED that the defendants shall have until 12:00 p.m. (Pacific Daylight Time),
2 September 25, 1998, in which to file an opposition to the United States' motion in limine;
3 and it is hereby further

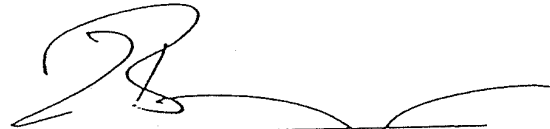
4 ORDERED that the parties shall appear before the Court on September 28, 1998, at
5 2:30 p.m., for a hearing on the government's motion in limine; and it is hereby further

6 ORDERED that service by all parties shall be accomplished by overnight delivery and
7 facsimile transmission; and it is hereby further

8 ORDERED that plaintiff shall produce to defendants by September 9, 1998, copies of
9 all documentary evidence plaintiff intends to introduce into evidence during the contempt
10 proceeding, as well as any reports relating to the alleged violations of the Court's May 19,
11 1998 injunction. Plaintiff shall produce only those reports prepared by percipient witnesses
12 to the alleged violations.

13 IT IS SO ORDERED.

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15 Dated: September 3, 1998


16 CHARLES R. BREYER
17 UNITED STATES DISTRICT JUDGE
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