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AND JEFFREY JONES
16

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

20 UNITED STATES OF AMERICA,
21
22 Plaintiff,
23 v.
24 OAKLAND CANNABIS BUYERS'
COOPERATIVE AND JEFFREY JONES,
25 Defendants.

No. 98-0088 CRB

**DECLARATION OF ANNETTE P.
CARNEGIE IN SUPPORT OF
DEFENDANTS' MOTION TO DISSOLVE
AND IN OPPOSITION TO THE
GOVERNMENT'S MOTION FOR
SUMMARY JUDGMENT AND
PERMANENT INJUNCTION**

Date: March 22, 2002
Time: 10:00 a.m.
Honorable Charles R. Breyer

26 AND RELATED ACTIONS.
27

28

1 I, ANNETTE P. CARNEGIE, declare as follows:

2 1. I am a member of the law firm of Morrison & Foerster LLP and am admitted to practice
3 before this Court. I am one of the counsel of record for Defendants OAKLAND CANNABIS
4 BUYERS' COOPERATIVE and JEFFREY JONES (collectively "OCBC" or "Defendants"). If
5 called as a witness, I could and would competently testify thereto.

6 **Rule 56(f) Request for Discovery**

7 2. The government, in conjunction with its motion for preliminary and permanent
8 injunction and for summary judgment, submitted the affidavits of five Drug Enforcement
9 Administration ("DEA") special agents. All five declarations describe the circumstances surrounding
10 several undercover purchases of marijuana from the OCBC. The undercover purchases were based
11 wholly upon a fraudulent scheme whereby the special agents used phony prescriptions to procure
12 cards for the purchase of cannabis intended for medical purposes from the OCBC. Defendants have
13 not deposed these witnesses. If given an opportunity to depose the agents, the following disputed
14 issues of material fact would arise:

15 (a) whether the agents' conduct was in fact fraudulent and improperly induced the sale
16 of cannabis by Defendants, thereby creating an issue of material fact as to the affirmative defenses of
17 entrapment and mistake of law.

18 (b) whether the agents actually witnessed the purchase of cannabis for medical purpose
19 by OCBC's patient-members, thereby creating an issue of material fact as to Defendants' violation of
20 the Controlled Substances Act ("CSA").

21 (c) whether the agents actually saw the plants they allege to be cannabis growing at the
22 OCBC. Any evidence concerning this matter would create a disputed issue of material fact as to
23 Defendants' violation of the CSA.

24 3. Defendants also seek discovery from the government concerning any research
25 conducted regarding the medical efficacy of cannabis as well as the government's response to efforts
26 to conduct research on that subject. This discovery bears directly upon whether the federal
27 government has blocked any research and/or blocked studies regarding the medical efficacy of
28 cannabis and whether a compelling interest or even a rational basis exists for denying seriously ill

1 patients access to medical cannabis. This discovery also bears directly upon whether the government
2 is guilty of unclean hands.

3 4. Defendants also seek discovery from the government concerning the basis for the
4 government's claim that the solely intrastate cultivation, distribution and consumption of medical
5 cannabis substantially affects interstate commerce.

6 5. Defendants have not delayed this discovery in that the Supreme Court's resolution of the
7 issue of medical necessity and the government's motion for summary judgment and a permanent
8 injunction has created a need for this discovery.

9
10 **Exhibits In Support of Motion to Dissolve and In Opposition
to Motion for Summary Judgment and Permanent Injunction**

11 6. Submitted with this declaration are true and correct copies of the following exhibits:

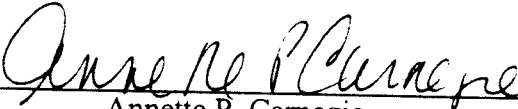
- 12 (a) Attached hereto as Exhibit A is a true and correct copy of T. Mikuriya, M.D.,
13 Ed., *Marijuana: Medical Papers 1839-1972*, xiv (1973).
- 14 (b) Attached hereto as Exhibit B is a true and correct copy of *Report of the Indian
15 Hemp Drugs Commission* (1894).
- 16 (c) Attached hereto as Exhibit C is a true and correct copy of D. Musto, M.D.,
17 "The 1937 Marijuana Tax Act" reprinted in T. Mikuriya, M.D., Ed.,
18 *Marijuana: Medical Papers* (1972).
- 19 (d) Attached hereto as Exhibit D is a true and correct copy of *Taxation of
20 Marihuana: Hearing on H.R. 6906 Before Subcomm. of the Senate Comm. on
21 Finance, 75th Cong., 1st Sess. 33* (1937).
- 22 (e) Attached hereto as Exhibit E is a true and correct copy of *Taxation of
23 Marihuana: Hearings on H.R. 6385 Before the House Comm. on Ways and
24 Means, 75th Cong., 1st Sess. 87 et seq.* (1937).
- 25 (f) Attached hereto as Exhibit F is a true and correct copy of Mayor's Comm. on
26 Marihuana, *The Marihuana Problem in the City of New York: Sociological,
27 Medical, Psychological and Pharmacological Studies*, v (1944).
- 28

- 1 (g) Attached hereto as Exhibit G is a true and correct copy of *Marihuana: A*
2 *Signal of Misunderstanding; First Report of the National Commission on*
3 *Marihuana and Drug Abuse* (1972).
- 4 (h) Attached hereto as Exhibit H is a true and correct copy of Ministry of Welfare,
5 Health and Cultural Affairs, *Dutch Drug Policy: Some Facts and Figures*
6 (1992).
- 7 (i) Attached hereto as Exhibit I is a true and correct copy of Netherlands Institute
8 for Alcohol and Drugs, *Fact Sheet: Cannabis Policy* (1995).
- 9 (j) Attached hereto as Exhibit J is a true and correct copy of Judge Young's
10 Opinion & Recommended Ruling, Findings of Fact, Conclusions of Law and
11 Decision of Administrative Law Judge, Docket No. 86-22.
- 12 (k) Attached hereto as Exhibit K is a true and correct copy of Kassirer, M.D.,
13 "Federal Foolishness and Marijuana," *New Eng. J of Medicine*, Jan. 30, 1997.
- 14 (l) Attached hereto as Exhibit L is a true and correct copy of Feldman & Mandel,
15 "Providing Medical Marijuana: The Importance of Cannabis Clubs," *J. of*
16 *Psychoactive Drugs*, Apr.-June 1998.
- 17 (m) Attached hereto as Exhibit M is a true and correct copy of *Select Committee on*
18 *Science and Technology, Ninth Report*, "Cannabis: The Scientific and Medical
19 Evidence," 1998.
- 20 (n) Attached hereto as Exhibit N is a true and correct copy of June 22, 1999, letter
21 from Institute of Medecine to Jeffery Jones.
- 22 (o) Attached hereto as Exhibit O is a true and correct copy of *Queen v. Parker*,
23 No. C28732, slip op. (Ont. App. July 31, 2000).
- 24 (p) Attached hereto as Exhibit P is a true and correct copy of Canadian regulations
25 governing the medical use of cannabis.
- 26
27
28

1 (q) Attached hereto as Exhibit Q is a true and correct copy of *State of Oregon, et*
2 *al. v. Ashcroft, et al.*, No. 01-1647-JO, of which this Court is requested to take
3 judicial notice pursuant to Federal Rule of Evidence 201.
4

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

7 Executed this 7th day of March 2002, at San Francisco, California.

8
9 
10 Annette P. Carnegie