

EXHIBIT A

ALCALAY DECLARATION

1 ROBERT A. RAICH (State Bar No. 147515)
1970 Broadway, Suite 1200
2 Oakland, California 94612
Telephone: (510) 338-0700
3 Facsimile: (510) 338-0600

4 GERALD F. UELMEN (State Bar No. 39909)
Santa Clara University School of Law
5 Santa Clara, California 95053
Telephone: (408) 554-5729
6 Facsimile: (408) 554-4426

7 RANDY BARNETT
Harvard Law School
8 1525 Massachusetts Avenue, Griswold 308
Cambridge, Massachusetts 02138
9 Telephone: (617) 384-8162
Facsimile: (617) 496-4863
10 (Admitted *Pro Hac Vice*)

11 ANNETTE P. CARNEGIE (State Bar No. 118624)
MORRISON & FOERSTER LLP
12 425 Market Street
San Francisco, California 94105-2482
13 Telephone: (415) 268-7000
Facsimile: (415) 268-7522

14 Attorneys for Defendants
15 OAKLAND CANNABIS BUYERS' COOPERATIVE 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
Plaintiff,
22
v.
23 OAKLAND CANNABIS BUYERS'
24 COOPERATIVE and JEFFREY JONES,
25 Defendants.

26 AND RELATED ACTIONS.
27
28

No. C 98-0088 CRB

**DECLARATION OF
MICHAEL M. ALCALAY, M.D., M.P.H.
IN SUPPORT OF MOTION TO
DISSOLVE PRELIMINARY
INJUNCTION AND IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT/
PERMANENT INJUNCTION**

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

1 I, MICHAEL M. ALCALAY, declare:

2 1. I am Medical Director of the Oakland Cannabis Buyers' Cooperative (the
3 "Cooperative" or "OCBC"). As Medical Director I am familiar with the policies and procedures
4 of the OCBC. I have personal knowledge of the facts stated herein, and if called as a witness, I
5 could and would testify competently as to them.

6 2. I am a Board-certified pediatrician. I graduated from U.C.L.A. medical school in
7 1968. I received a Masters Degree in public health in 1973 from the University of California
8 Berkeley School of Public Health. I practiced as a pediatrician in the Northern California Kaiser
9 Hospitals until 1995 when I became ill with an AIDS related illness.

10 3. As Medical Director of the Cooperative I attend regular board meetings and
11 consortium meetings. Other duties include acting as liaison between the Cooperative and patient-
12 members' authorizing physicians and doing patient outreach. As a result of my duties as Medical
13 Director, I am knowledgeable about many Cooperative patients and their medical conditions.

14 4. Since October 20, 1998, the OCBC has not engaged in the manufacture or
15 distribution of cannabis from its premises, or used the premises for the purpose of manufacturing
16 or distributing cannabis. The OCBC has remained open for limited purposes including:
17 conducting support groups for patients suffering from a variety of medical conditions; providing
18 massage therapy for patient-members; conducting member intake procedures and verifying
19 physician recommendations and approvals; issuing identification cards on behalf of the City of
20 Oakland pursuant to Oakland municipal law; conducting meetings regarding medical cannabis
21 research; providing meals for patient-members; furnishing a meeting space for various community
22 groups; selling books and T-shirts; responding to telephone inquires regarding medical cannabis
23 issues; and administrative activities.

24 5. As Medical Director, I have reviewed and am generally familiar with the medical
25 circumstances that have led patient- members to seek medical cannabis. I have witnessed the
26 devastating effect of the OCBC's inability to provide cannabis to these members.
27
28

1 6. I am personally aware that patient-members of the Cooperative suffer from
2 debilitating and often deadly diseases, including HIV and/or AIDS, cancer, arthritis, multiple
3 sclerosis, and glaucoma—to name a few. I have seen and am aware that medical cannabis
4 provides relief to patient-members as a pain reliever, an appetite stimulant, an anti-nauseant, and as
5 relief from spasticity. Medical cannabis relieves intraocular eye pressure in patient-members who
6 suffer from glaucoma. Patient-members who have not been able to receive cannabis have been
7 unable to eat, have suffered excruciating pain and debilitating side effects. Some have died.

8 7. I am also a patient-member of the Cooperative. I learned I was HIV-positive in
9 1986. I was first diagnosed with AIDS in 1993. In 1995, I became very seriously ill with an
10 AIDS-related condition caused by a microbe called cryptosporidium that caused me to have
11 constant diarrhea. I experienced a dramatic loss of my appetite, and I also suffered generally from
12 apathy. I was suffering from the classic “wasting syndrome” that is associated with many AIDS
13 patients. When I eventually medicated myself with cannabis, I regained my appetite, and I was
14 finally able to regain weight again. The cannabis kept me alive until a therapy could be found to
15 eradicate the microbe from my body.

16 8. I have been required to take a lot of different medications to treat my AIDS
17 condition, including the drug AZT and a variety of different protease inhibitors. I need these
18 medications in order to live. But these medicines cause nausea and vomiting. To combat the
19 nausea I have tried several prescription drugs including Marinol and Atarax, but none of them have
20 worked for me. Cannabis has been the only medicine that has worked for me to control the nausea
21 and vomiting caused by my AIDS medications.

22 9. I am aware that patient-members (including myself) suffer from serious medical
23 conditions such as AIDS-related “wasting syndrome” and those with cancer undergoing
24 chemotherapy experience nausea and severe appetite deficits. Patients, such as myself, also suffer
25 these same conditions as a result of having to take multiple medications to treat AIDS, some of
26 them new or experimental. I am aware that medical cannabis relieves these symptoms in patients
27 and enables them to eat. Medical cannabis prolongs some of these patients’ lives (including my
28

1 own). Without the necessary cannabis, patients are unable to take the other medications (in the
2 case of AIDS patients) or to continue to undergo the intensive chemotherapy (in the case of cancer
3 patients) in order to stay alive. If the patients do not have access to cannabis these patients will
4 suffer imminent harm. Cannabis is necessary for the treatment of these patients' medical
5 conditions. For some of these patients cannabis will alleviate the medical condition or symptoms
6 associated with it. For these patients, there is no legal alternative to cannabis for the effective
7 treatment of the patients' medical condition because the patients have tried legal alternatives to
8 cannabis and have found them ineffective in treating their conditions, or have found that such
9 alternatives result in intolerable side effects. Thus, these patients have no reasonable alternative to
10 medical cannabis. I believe, based on personal experience, that supplying medical cannabis to
11 these patient-members is necessary to avert imminent and often life-threatening harm.

12 10. I am aware that the patient-members suffer from serious medical conditions such as
13 multiple sclerosis or quadriplegia. These patient-members experience debilitating spasticity and/or
14 constant pain. If these patients do not have access to cannabis these patients will suffer imminent
15 harm such that they are forced to live with uncontrollable muscular spasticity and to endure
16 debilitating pain throughout every day. Cannabis is necessary for the treatment of these patients'
17 medical condition. For some of these patients, cannabis will alleviate the medical condition or
18 symptoms associated with the multiple sclerosis or quadriplegia. For these patients, there is no
19 legal alternative to cannabis for the effective treatment of the patients' medical condition because
20 the patients have tried legal alternatives to cannabis and have found them ineffective in treating
21 their conditions, or have found that such alternatives result in intolerable side effects. Thus, these
22 patient-members have no reasonable alternative to medical cannabis. I believe that supplying
23 medical cannabis to these patient-members is necessary to avert imminent and often life-
24 threatening harm.

25 11. Patient-members have been forced to endure further harm by the OCBC's inability
26 to provide medical cannabis. Several of the patient-members are now deceased. They died from
27 illnesses including cancer, AIDS, and cachexia. Patient-members John Odell, Elizabeth Schoen,
28

1 Willie Beal, Paul Allen, Miles Saunders, Walter Hatchett , Matthew Little Moon, Timothy Sidwell,
2 Shawn Malvo, James McClelland, Milton Jeffries, Robert Martinez, James Vernon, Rodney
3 Barber, Garcia Glenn, Philip Escovedo, Thomas Laspina, Richard Cutrufelli, Janet Cory, Jayson
4 Holden, Joanne Hausler, Alain Damont, Darrow Erlin, Earl Baldock, Leona Jacobs-White have
5 died. Access to medical cannabis may have offered them a chance at recovery, minimized their
6 suffering, or even prolonged their life.

7 12. Many patient-members' lives have been jeopardized since the preliminary
8 injunction was issued. Patient-members have been forced to try to obtain cannabis from
9 alternative and unsafe sources. They are placed in danger both because the act of purchasing from
10 unauthorized sources such as street dealers is inherently dangerous and because impurities in
11 marijuana purchased on the street may be harmful to their fragile health. Some patient-members
12 have chosen to forego their medication altogether because of the severe and harmful risks
13 associated with these alternative sources. These patients have faced months of needless pain and
14 worsening of the severe symptoms associated with their illnesses. Some of these patients even
15 face death because they do not now have safe lawful access to medical cannabis.

16 13. The Cooperative has never provided cannabis grown outside of California to its
17 patient-members. All of the Cooperative's patient-members are California residents who have
18 received recommendations for medical cannabis from California physicians. If allowed to
19 dispense cannabis by the Court, the Cooperative will limit any medical cannabis dispensed to
20 cannabis that is grown solely in California. The Cooperative also will ensure that medical
21 cannabis is provided only upon the recommendation of a California physician and only to
22 California residents. The Cooperative will instruct its patient-members that they must consume

23 ////

24 ////

25 ////

26 ////

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

any medical cannabis received from the Cooperative wholly within the borders of California; the Cooperative will require that its patient-members agree to that condition.

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

Executed this 6th day of March, 2002, at Oakland, California.

Michael M. Alcalay, M.D., MPH
Michael M. Alcalay, M.D., M.P.H.