

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 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION  
20

21 UNITED STATES OF AMERICA,  
22 Plaintiff,  
23 v.  
24 OAKLAND CANNABIS BUYERS'  
COOPERATIVE and JEFFREY JONES,  
25 Defendants.  
26  
27 AND RELATED ACTIONS.  
28

No. C 98-0088 CRB

**DEFENDANTS' SEPARATE  
STATEMENT OF OBJECTIONS IN  
SUPPORT OF MOTION TO  
DISSOLVE AND IN OPPOSITION TO  
THE GOVERNMENT'S MOTION  
FOR SUMMARY JUDGMENT AND  
PERMANENT INJUNCTIVE RELIEF**

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

1 Defendants Oakland Cannabis Buyer's Cooperative and Jeffrey Jones (collectively "OCBC")  
2 hereby object to the declarations of Mark T. Quinlivan and Special Agents Brian Nehring, Carolyn  
3 Porras, Deborah Muusers, Mark Nelson, and Bill Nyfeler submitted on January 8, 1998 in support of  
4 Plaintiff's Motion for Summary Judgment and Preliminary Injunctive Relief and relied upon by the  
5 government in support of its Motion for Summary Judgment and Permanent Injunctive Relief. To the  
6 extent the government intends to rely upon its evidence submitted in connection with the Order to  
7 Show Cause, Defendants request that the Court take judicial notice of Defendants' Objections and  
8 Motion to Strike the Declarations of Mark Quinlivan, Bill Nyfeler, Dean Arnold and Peter Ott filed  
9 August 14, 1998.

10 As the objections in defendants' accompanying memorandum make clear, the declarations  
11 submitted by the Government in support of their motion for a preliminary injunction should be  
12 excluded. This separate statement is submitted by OCBC in order to delineate the specific objections  
13 to each individual declaration. Defendants hereby incorporate by reference any and all objections  
14 made in their memorandum.

### 15 GENERAL OBJECTIONS

#### 16 Declaration of Mark T. Quinlivan

17 The declaration of Mark T. Quinlivan<sup>1</sup> and the accompanying exhibits are insufficient to  
18 establish a violation of the CSA. This declaration is merely a compilation of brochures, newsletters,  
19 and web site excerpts that do not cite any specific instance of an alleged violation of the CSA. At  
20 most, these exhibits are alleged admissions of intent to do an act, which of course, is not evidence of  
21 any act itself. *See Mitchell v. Sharon*, 59 F. 980, 983 (1894) ("Words which merely impute a  
22 criminal intention, not yet put into action, are not actionable. Guilty thoughts are not a crime.")  
23 Furthermore, this declaration contains hearsay and is not based upon personal knowledge. Fed. R.  
24 Evid. 602, 801, 802. The three exhibits to the declaration were not properly authenticated. Fed. R.  
25 Evid. 901. Accordingly, the Court should not rely upon the declarations and the accompanying  
26 exhibits as evidence of OCBC's alleged violation of the CSA.

27 \_\_\_\_\_

28



1 (conclusory, self-serving affidavit lacking detailed facts insufficient). The declarant fails to identify  
2 the individuals involved in the alleged distribution of cannabis.

### 3 **SPECIFIC OBJECTIONS**

#### 4 **Declaration of Mark T. Quinlivan**

5 Defendants object specifically to the following paragraphs of, and exhibits to, the Declaration  
6 of Mark T. Quinlivan:

7 **Paragraph 2 and Exhibit 1.** Defendants object to the web page on the grounds that it is  
8 vague, conclusory, and lacks foundation, as this declarant has no personal knowledge of the  
9 purported contents. Fed. R. Evid. 602. Defendants further object to these exhibits as irrelevant, as a  
10 statement of intent is not evidence the defendants have in fact violated the CSA. Fed. R. Evid. 401,  
11 402. Furthermore, defendants object that the exhibit was not properly authenticated. Fed. R. Evid.  
12 901. A lack of proper authentication under Rule 901 of the Federal Rules of Evidence precludes the  
13 government from excluding the statements contained in the web site from the hearsay rule as an  
14 admission by party opponent, as the declarant cannot be properly identified as an agent of the OCBC.  
15 Fed. R. Evid. 802(d)(2).

16 **Paragraph 3 and Exhibit 2.** Defendants object to the brochure on the grounds that it is  
17 vague, conclusory, and lacks foundation, as this declarant has no personal knowledge of the  
18 purported contents. Fed. R. Evid. 602. Defendants further object to these exhibits as irrelevant, as a  
19 statement of intent is not evidence the Defendants have in fact violated the CSA. Fed. R. Evid. 401,  
20 402. Defendants further object to these exhibits on the ground that they are irrelevant and  
21 speculative. Fed. R. Evid. 401, 402. Furthermore, Defendants object that the exhibit was not  
22 properly authenticated. Fed. R. Evid. 901. A lack of proper authentication under Rule 901 of the  
23 Federal Rules of Evidence precludes the government from excluding the statements contained in the  
24 brochure from the hearsay rule as an admission by party opponent, as the declarant cannot be  
25 properly identified as an agent of the OCBC. Fed. R. Evid. 802(d)(2).

26 **Paragraph 4 and Exhibit 3.** Defendants object to the newsletter on the grounds that it is  
27 vague, conclusory, and lacks foundation, as this declarant has no personal knowledge of the  
28 purported contents. Fed. R. Evid. 602. Defendants further object to these exhibits as irrelevant, as a

1 statement of intent is not evidence the Defendants have in fact violated the CSA. Fed. R. Evid. 401,  
2 402. Defendants further object to these exhibits on the ground that they are irrelevant and  
3 speculative. Fed. R. Evid. 401, 402. Furthermore, Defendants object that the exhibit was not  
4 properly authenticated. Fed. R. Evid. 901. A lack of proper authentication under Rule 901 of the  
5 Federal Rules of Evidence precludes the government from excluding the statements contained in the  
6 web site from the hearsay rule as an admission by party opponent, as the declarant cannot be properly  
7 identified as an agent of the OCBC. Fed. R. Evid. 802(d)(2).

#### 8 **Declaration of Special Agent Brian Nehring**

9 Defendants object specifically to the following paragraphs of the Declaration of Special  
10 Agent Brian Nehring:

11 **Paragraph 4.** Defendants object to paragraph 4, lines 14-18, on the grounds that the  
12 testimony is vague, ambiguous, and lacks foundation as this declarant has no personal knowledge of  
13 any purported distribution of cannabis. Fed. R. Evid. 602. Defendants object to this testimony on the  
14 ground that it constitutes improper opinion testimony and impermissible legal conclusions as to  
15 whether OCBC was in fact “a marijuana distribution business.” Fed. R. Evid. 701, 702. Defendants  
16 further object to this declaration on the ground that it constitutes improper opinion testimony and  
17 impermissible legal conclusions as to whether the “one-eighth ounce of marijuana with the brand  
18 name ‘Northern Lights’” was in fact marijuana. Fed. R. Evid. 701, 702. Defendants object to the  
19 reference to the alleged purchase of marijuana “using an undercover name, identification, and a  
20 phony physician statement” as impermissible evidence illegally obtained by fraud and entrapment  
21 that would be unfairly prejudicial to Defendants. Fed. R. Evid. 403.

22 **Paragraph 6.** Defendants object to paragraph 6, lines 1-7, on the grounds that it is vague,  
23 ambiguous, and lacks foundation. Fed. R. Evid. 602.

24 **Paragraph 7.** Defendants object to paragraph 7, lines 8-10, on the grounds that it is vague,  
25 ambiguous, and lacks foundation. Fed. R. Evid. 602.

26 **Paragraph 8.** Defendants object to paragraph 8, lines 15-16, on the grounds that the alleged  
27 presence of “two small children” is irrelevant and speculative. Fed. R. Evid. 401, 402. Defendants  
28 also object to the statement that the “presence of two small children” is unfairly prejudicial with little

1 to no probative value, making the statement irrelevant. Fed. R. Evid. 403. Defendants further object  
2 to the statement that the children were in the company of an adult “who appeared to be working for  
3 the OCBC” as irrelevant and speculative. Fed. R. Evid. 401, 402. This statement is unfairly  
4 prejudicial. Fed. R. Evid. 403. The statement was also made without personal knowledge of the  
5 employment status of said person at OCBC. Fed. R. Evid. 602.

6 **Paragraph 9.** Defendants object to paragraph 9, lines 17-19, on the grounds that they  
7 constitute hearsay to the extent that they rely upon the statements of an unidentified individual named  
8 “Jim” that the forms submitted were acceptable for the truth of the matter asserted. Fed. R. Evid.  
9 801, 802. Failure to positively identify “Jim” as an agent and/or employee of the OCBC precludes  
10 the government from invoking the admission by party-opponent rule, claiming that “Jim’s”  
11 statements are non-hearsay. Fed. R. Evid 801(d)(2). Accordingly, Defendants object to these  
12 hearsay statements on the grounds that admitting them would fly in the face of the purpose of the  
13 hearsay rule, which is to prevent the admission of an out-of-court statement for which the truth and  
14 veracity of the witness cannot be ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S. Dist.  
15 Col. 1813) (“Its intrinsic weakness, its incompetency to satisfy the mind of the existence of fact, and  
16 the frauds which might be practiced under its cover, combine to support the rule that hearsay  
17 evidence is totally inadmissible.”).

18 **Paragraph 10.** Defendants object to paragraph 10, lines 5-9, on the grounds that it is vague,  
19 conclusory, and lacks foundation, as this declarant has no personal knowledge of the purported  
20 contents. Fed. R. Evid. 602. The testimony also constitutes improper opinion testimony and  
21 impermissible legal conclusions as to whether the alleged “numerous samples of marijuana,” the  
22 “smell of burning marijuana,” the “two large growing marijuana plants under lights,” and/or the  
23 “several large marijuana plants growing in a Mylar-lined display case” were in fact marijuana. Fed.  
24 R. Evid. 701, 702.

25 **Paragraph 11.** Defendants object to paragraph 11, lines 10-15, on the grounds that the  
26 testimony is vague, conclusory, and lacks foundation, as this declarant has no personal knowledge of  
27 the purported contents. Fed. R. Evid. 602. The testimony also constitutes improper opinion  
28 testimony and impermissible legal conclusions as to whether the alleged “seven kinds of marijuana

1 displayed” and/or the alleged “Mexican-grown marijuana” were in fact marijuana or were in fact  
2 grown in Mexico. Fed. R. Evid. 701, 702. Defendants object on the grounds that the testimony  
3 constitutes inadmissible hearsay to the extent that it relies upon the statement of an unidentified  
4 individual named “Jim.” Any statement by “Jim” that Special Agent Nehring could purchase  
5 marijuana is inadmissible for the truth of the matter asserted. Fed. R. Evid. 801, 802. Failure to  
6 positively identify “Jim” as an agent and/or employee of the OCBC precludes the government from  
7 invoking the admission by party-opponent rule, claiming that “Jim’s” statements are non-hearsay.  
8 Fed. R. Evid 801(d)(2). Accordingly, Defendants object to these hearsay statements on the grounds  
9 that admitting them would fly in the face of the purpose of the hearsay rule, which is to prevent the  
10 admission of an out-of-court statement for which the truth and veracity of the witness cannot be  
11 ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S. Dist. Col. 1813) (“Its intrinsic  
12 weakness, its incompetency to satisfy the mind of the existence of fact, and the frauds which might be  
13 practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible.”).

14 **Paragraph 12.** Defendants object to paragraph 12, lines 16-17, on the grounds that the  
15 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
16 the alleged “marijuana with the ‘brand name of ‘Northern Lights’” was in fact marijuana. Fed. R.  
17 Evid. 701, 702. Defendants object to the reference to the alleged purchase of marijuana a card  
18 obtained using a phony physician statement as impermissible evidence illegally obtained by fraud and  
19 entrapment that would be unfairly prejudicial to defendants. Fed. R. Evid. 403.

20 **Paragraph 13.** Defendants object to paragraph 13, lines 19-20, on the grounds that the  
21 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
22 the “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

23 **Paragraph 14.** Defendants object to paragraph 14, line 21, on the grounds that the testimony  
24 constitutes improper opinion testimony and impermissible legal conclusions as to whether the “bag of  
25 suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702. Defendants object to the  
26 reference to the alleged purchase of marijuana a card obtained using a phony physician statement as  
27 impermissible evidence illegally obtained by fraud and entrapment that would be unfairly prejudicial  
28 to defendants. Fed. R. Evid. 403.

1           **Paragraph 15.** Defendants object to paragraph 14, line 21, on the grounds that the testimony  
2 constitutes improper opinion testimony and impermissible legal conclusions as to whether the  
3 “distribution of marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

4   **Declaration of Special Agent Carolyn Porras**

5           Defendants object specifically to the following paragraphs of the Declaration of Special  
6 Agent Carolyn Porras:

7           **Paragraph 4.** Defendants object to paragraph 4, lines 14-18, on the grounds that the  
8 testimony is vague, ambiguous, and lacks foundation as this declarant has no personal knowledge of  
9 any purported distribution of marijuana. Fed. R. Evid. 602. Defendants object to this testimony on  
10 the ground that it constitutes improper opinion testimony and impermissible legal conclusions as to  
11 whether OCBC was in fact “a marijuana distribution business.” Fed. R. Evid. 701, 702. Defendants  
12 further object to this declaration on the ground that it constitutes improper opinion testimony and  
13 impermissible legal conclusions as to whether the alleged “one-eighth ounce of marijuana” was in  
14 fact marijuana. Fed. R. Evid. 701, 702. Defendants object to the reference to the alleged purchase of  
15 marijuana “using the OCBC membership card that had been previously issued to Special Agent  
16 Nehring” as impermissible evidence illegally obtained by fraud and entrapment that would be  
17 unfairly prejudicial to defendants. Fed. R. Evid. 403.

18           **Paragraph 9.** Defendants object to paragraph 9, lines 16-23, on the grounds that the  
19 testimony constitutes inadmissible hearsay to the extent that it relies upon the statement of an  
20 unidentified individual named called “UF1.” Any alleged statement by “UF1” that Special Agent  
21 Porras could purchase cannabis is inadmissible for the truth of the matter asserted. Fed. R. Evid. 801,  
22 802. Failure to positively identify “UF1” as an agent and/or employee of the OCBC precludes the  
23 government from invoking the admission by party-opponent rule, claiming that “UF1’s” statements  
24 are non-hearsay. Fed. R. Evid 801(d)(2). Accordingly, Defendants object to these hearsay  
25 statements on the grounds that admitting them would fly in the face of the purpose of the hearsay  
26 rule, which is to prevent the admission of an out-of-court statement for which the truth and veracity  
27 of the witness cannot be ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S. Dist. =Col.  
28 1813) (“Its intrinsic weakness, its incompetency to satisfy the mind of the existence of fact, and the



1 frauds which might be practiced under its cover, combine to support the rule that hearsay evidence is  
2 totally inadmissible.”).

3       **Paragraph 10.** Defendants further object to this paragraph on the ground that it constitutes  
4 improper opinion testimony and impermissible legal conclusions as to whether the alleged “burning  
5 smell of marijuana ” and/or the “fifteen marijuana plants being grown” were in fact marijuana. Fed.  
6 R. Evid. 701, 702.

7       **Paragraph 11.** Defendants object to paragraph 11, lines 3-7, on the grounds that the  
8 testimony constitutes inadmissible hearsay to the extent that it relies upon the statement of an  
9 unidentified individual named called “UF1.” Any alleged statement by “UF1” offering to sell  
10 cannabis to Special Agent Porras is inadmissible for the truth of the matter asserted. Fed. R. Evid.  
11 801, 802. Failure to positively identify “UF1” as an agent and/or employee of the OCBC precludes  
12 the government from invoking the admission by party-opponent rule, claiming that “UF1’s”  
13 statements are non-hearsay. Fed. R. Evid 801(d)(2). Accordingly, Defendants object to these  
14 hearsay statements on the grounds that admitting them would fly in the face of the purpose of the  
15 hearsay rule, which is to prevent the admission of an out-of-court statement for which the truth and  
16 veracity of the witness cannot be ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S. Dist.  
17 Col. 1813) (“Its intrinsic weakness, its incompetency to satisfy the mind of the existence of fact, and  
18 the frauds which might be practiced under its cover, combine to support the rule that hearsay  
19 evidence is totally inadmissible.”).

20       **Paragraph 12.** Defendants object to paragraph 12, lines 16-17, on the grounds that the  
21 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
22 the alleged “marijuana with the ‘brand name of ‘Northern Lights’” was in fact marijuana. Fed. R.  
23 Evid. 701, 702. Defendants object to the reference to the alleged purchase of marijuana a card  
24 obtained using a phony physician statement as impermissible evidence illegally obtained by fraud and  
25 entrapment that would be unfairly prejudicial to defendants. Fed. R. Evid. 403.

26       **Paragraph 13.** Defendants object to paragraph 13, lines 10-11, on the grounds that the  
27 testimony is vague, ambiguous, and lacks foundation as this declarant has no personal knowledge of  
28 any “customers.” Fed. R. Evid. 602. Defendants further object to this paragraph on the ground that it

1 constitutes improper opinion testimony and impermissible legal conclusions as to whether the 5-10  
2 other people standing in line were in fact “customers.” Fed. R. Evid. 701, 702. Defendants further  
3 object to this paragraph on the ground that it constitutes improper opinion testimony and  
4 impermissible legal conclusions as to whether the alleged “marijuana” was in fact marijuana. Fed. R.  
5 Evid. 701, 702.

6 **Paragraph 14.** Defendants object to paragraph 14, lines 13-14, on the grounds that the  
7 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
8 the alleged “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

9 **Paragraph 15.** Defendants object to paragraph 15, line 15, on the grounds that the testimony  
10 constitutes improper opinion testimony and impermissible legal conclusions as to whether the alleged  
11 “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

12 **Paragraph 16.** Defendants object to paragraph 16, lines 19-20, on the grounds that the  
13 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
14 the alleged “distribution of marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

#### 15 **Declaration of Special Agent Deborah Muusers**

16 Defendants object specifically to the following paragraphs of the Declaration of Special  
17 Agent Deborah Muusers:

18 **Paragraph 4.** Defendants object to paragraph 4, lines 14-18, on the grounds that the  
19 testimony is vague, ambiguous, and lacks foundation as this declarant has no personal knowledge of  
20 any purported distribution of marijuana. Fed. R. Evid. 602. Defendants object to this testimony on  
21 the ground that it constitutes improper opinion testimony and impermissible legal conclusions as to  
22 whether OCBC was in fact “a marijuana distribution business.” Fed. R. Evid. 701, 702. Defendants  
23 further object to this declaration on the ground that it constitutes improper opinion testimony and  
24 impermissible legal conclusions as to whether the alleged “one-eighth ounce of marijuana with the  
25 brand name ‘That’s Purdy’” was in fact marijuana. Fed. R. Evid. 701, 702. Defendants object to the  
26 reference to the alleged purchase of marijuana “using an undercover name, identification, and a  
27 phony physician statement” as impermissible evidence illegally obtained by fraud and entrapment  
28 that would be unfairly prejudicial to defendants. Fed. R. Evid. 403.

1           **Paragraph 6.** Defendants object to paragraph 6, lines 1-8, on the grounds that it is vague,  
2 ambiguous, and lacks foundation. Fed. R. Evid. 602.

3           **Paragraph 7.** Defendants object to paragraph 7, lines 9-17, on the grounds that it is vague,  
4 ambiguous, and lacks foundation. Fed. R. Evid. 602.

5           **Paragraph 9.** Defendants object to paragraph 9, lines 1-4, on the grounds that they constitute  
6 hearsay to the extent that they rely upon the statements of others. Fed. R. Evid. 801, 802. Any  
7 alleged admission by a party-opponent contained therein is inadmissible as a result of first-level  
8 hearsay. Fed. R. Evid. 801, 802.

9           **Paragraph 10.** Defendants object to paragraph 10, lines 5-18, on the grounds that it is vague,  
10 conclusory, and lacks foundation, as this declarant has no personal knowledge of the purported  
11 contents. Fed. R. Evid. 602. The testimony also constitutes improper opinion testimony and  
12 impermissible legal conclusions as to whether the alleged “20-25 6”-8” inch marijuana plants,” the  
13 alleged “5-6 larger plants,” the alleged “food items that purported to contain marijuana,” the “what  
14 was purported to be [sic] marijuana,” and/or the alleged “smell of burning marijuana” were in fact  
15 marijuana. Fed. R. Evid. 701, 702. The testimony also constitutes improper opinion testimony and  
16 impermissible legal conclusions as to whether the alleged “drug paraphernalia, including pipes” was  
17 in fact drug paraphernalia. Fed. R. Evid. 701, 702. Defendants object on the grounds that the  
18 testimony is vague, ambiguous, and lacks foundation as this declarant has no personal knowledge of  
19 any “customers.” Fed. R. Evid. 602. Defendants further object to this paragraph on the ground that it  
20 constitutes improper opinion testimony and impermissible legal conclusions as to whether the 5-6  
21 other people standing in line were in fact “customers waiting in line to purchase marijuana.” Fed. R.  
22 Evid. 701, 702.

23           **Paragraph 11.** Defendants object to paragraph 11, lines 19-23, on the grounds that the  
24 testimony constitutes inadmissible hearsay to the extent that it relies upon the statement of an  
25 unidentified individual named called “UM1.” Any alleged nonverbal conduct by “UM1” that Special  
26 Agent Muusers could purchase cannabis is inadmissible for the truth of the matter asserted. Fed. R.  
27 Evid. 801, 802. Failure to positively identify “UM1” as an agent and/or employee of the OCBC  
28 precludes the government from invoking the admission by party-opponent rule, claiming that

1 “UF1’s” statements are non-hearsay. Fed. R. Evid 801(d)(2). Accordingly, Defendants object to  
2 these hearsay statements on the grounds that admitting them would fly in the face of the purpose of  
3 the hearsay rule, which is to prevent the admission of an out-of-court statement for which the truth  
4 and veracity of the witness cannot be ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S.  
5 Dist. Col. 1813) (“Its intrinsic weakness, its incompetency to satisfy the mind of the existence of fact,  
6 and the frauds which might be practiced under its cover, combine to support the rule that hearsay  
7 evidence is totally inadmissible.”). Defendants further object to the reference to the alleged purchase  
8 of marijuana using a card obtained in reliance upon a phony physician statement as impermissible  
9 evidence illegally obtained by fraud and entrapment that would be unfairly prejudicial to defendants.  
10 Fed. R. Evid. 403.

11 **Paragraph 12.** Defendants object to paragraph 12, lines 25-26, on the grounds that the  
12 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
13 the alleged “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

14 **Paragraph 13.** Defendants object to paragraph 13, line 1, on the grounds that the testimony  
15 constitutes improper opinion testimony and impermissible legal conclusions as to whether the alleged  
16 “undercover purchase of marijuana” was in fact marijuana. Fed. R. Evid. 701, 702. Defendants  
17 object to the reference to the alleged purchase of marijuana using a card obtained using a phony  
18 physician statement as impermissible evidence illegally obtained by fraud and entrapment that would  
19 be unfairly prejudicial to defendants. Fed. R. Evid. 403.

20 **Paragraph 15.** Defendants object to paragraph 13, line 1, on the grounds that the testimony  
21 constitutes improper opinion testimony and impermissible legal conclusions as to whether the alleged  
22 “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702. Defendants object to  
23 the reference to the alleged purchase of marijuana a card obtained using a phony physician statement  
24 as impermissible evidence illegally obtained by fraud and entrapment that would be unfairly  
25 prejudicial to defendants. Fed. R. Evid. 403.

26 **Paragraph 16.** Defendants object to paragraph 16, line 9, on the grounds that the testimony  
27 constitutes improper opinion testimony and impermissible legal conclusions as to whether the alleged  
28 “distribution of marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

1 **Declaration of Special Agent Mark Nelson**

2 Defendants object specifically to the following paragraphs of the Declaration of Special  
3 Agent Mark Nelson:

4 Paragraph 4. Defendants object to paragraph 4, lines 14-21, on the grounds that it is vague,  
5 conclusory, and lacks foundation, as this declarant has no personal knowledge of the identity of the  
6 individual and whether or not that person was an employee of the OCBC. Fed. R. Evid. 602.

7 **Declaration of Special Agent Bill Nyfeler**

8 Defendants object specifically to the following paragraphs of the Declaration of Special  
9 Agent Bill Nyfeler:

10 **Paragraph 4.** Defendants object to paragraph 4, lines 14-18, on the grounds that the  
11 testimony is vague, ambiguous, and lacks foundation as this declarant has no personal knowledge of  
12 any purported distribution of marijuana. Fed. R. Evid. 602. Defendants object to this testimony on  
13 the ground that it constitutes improper opinion testimony and impermissible legal conclusions as to  
14 whether OCBC was in fact “a marijuana distribution business.” Fed. R. Evid. 701, 702. Defendants  
15 further object to this declaration on the ground that it constitutes improper opinion testimony and  
16 impermissible legal conclusions as to whether the alleged “Mexican-grown marijuana” was in fact  
17 marijuana or was in fact grown in Mexico. Fed. R. Evid. 701, 702. Defendants object to the  
18 reference to the alleged purchase of marijuana using an undercover name, identification, and a phony  
19 physician statement as impermissible evidence illegally obtained by fraud and entrapment that would  
20 be unfairly prejudicial to defendants. Fed. R. Evid. 403.

21 **Paragraph 6.** Defendants object to paragraph 6, lines 23-26, on the grounds that it is vague,  
22 ambiguous, and lacks foundation. Fed. R. Evid. 602. Defendants object on the grounds that the  
23 testimony constitutes inadmissible hearsay to the extent that it relies upon the nonverbal assertive  
24 conduct of an unidentified adult male security guard. Any nonverbal conduct intended as an  
25 assertion by this unidentified male that Special Agent Nyfeler could enter the OCBC without  
26 identification is inadmissible for the truth of the matter asserted. Fed. R. Evid. 801, 802. Failure to  
27 positively identify this unidentified male as an agent and/or employee of the OCBC precludes the  
28 government from invoking the admission by party-opponent rule, claiming that the security guard’s

1 statements are non-hearsay. Fed. R. Evid 801(d)(2). Accordingly, Defendants object to these  
2 hearsay statements on the grounds that admitting them would fly in the face of the purpose of the  
3 hearsay rule, which is to prevent the admission of an out-of-court statement for which the truth and  
4 veracity of the witness cannot be ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S. Dist.  
5 Col. 1813) (“Its intrinsic weakness, its incompetency to satisfy the mind of the existence of fact, and  
6 the frauds which might be practiced under its cover, combine to support the rule that hearsay  
7 evidence is totally inadmissible.”).

8 **Paragraph 7.** Defendants object to paragraph 7, lines 1-6, on the grounds that it is vague,  
9 ambiguous, and lacks foundation. Fed. R. Evid. 602.

10 **Paragraph 8.** Defendants object to paragraph 8, lines 7-11 on the grounds that it is vague,  
11 conclusory, and lacks foundation, as this declarant has no personal knowledge of the purported  
12 contents. Fed. R. Evid. 602. The testimony also constitutes improper opinion testimony and  
13 impermissible legal conclusions as to whether the alleged “fifty marijuana plants,” the “plants,” the  
14 alleged “marijuana plants,” and/or the alleged “marijuana” were in fact marijuana. Fed. R. Evid. 701,  
15 702. Defendants object on the grounds that the testimony is vague, ambiguous, and lacks foundation  
16 as this declarant has no personal knowledge of any “customers.” Fed. R. Evid. 602. Defendants  
17 further object to this paragraph on the ground that it constitutes improper opinion testimony and  
18 impermissible legal conclusions as to whether the 5-6 other people standing in line were in fact  
19 walking “to the sales counter to purchase marijuana.” Fed. R. Evid. 701, 702.

20 **Paragraph 10.** Defendants object to paragraph 10, lines 16-17, to the extent that the  
21 testimony implies the purchase of marijuana using a card obtained in reliance upon a phony  
22 physician statement as impermissible evidence illegally obtained by fraud and entrapment that would  
23 be unfairly prejudicial to defendants. Fed. R. Evid. 403.

24 **Paragraph 11.** Defendants object to paragraph 11, lines 19-20, on the grounds that the  
25 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
26 the alleged “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

27

28

1           **Paragraph 12.** Defendants object to paragraph 12, line 21, on the grounds that the testimony  
2 constitutes improper opinion testimony and impermissible legal conclusions as to whether the alleged  
3 “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

4           **Paragraph 13.** Defendants object to paragraph 13, lines 24-25, on the grounds that the  
5 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
6 the alleged “undercover purchase of marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.  
7 Defendants object to the reference to the alleged purchase of marijuana using a card obtained in  
8 reliance upon a phony physician statement as impermissible evidence illegally obtained by fraud and  
9 entrapment that would be unfairly prejudicial to defendants. Fed. R. Evid. 403.

10           **Paragraph 14.** Defendants object to paragraph 14, lines 3-5, on the grounds that the  
11 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
12 the alleged “undercover purchase of marijuana” and/or the alleged “distribution of marijuana” was in  
13 fact marijuana. Fed. R. Evid. 701, 702. Defendants object to the reference to the alleged purchase of  
14 marijuana using a card obtained in reliance upon a phony physician statement as impermissible  
15 evidence illegally obtained by fraud and entrapment that would be unfairly prejudicial to defendants.  
16 Fed. R. Evid. 403.

17           **Paragraph 15.** Defendants object to paragraph 15, lines 6-9, on the grounds that the  
18 testimony is vague, ambiguous, and lacks foundation as this declarant has no personal knowledge of  
19 any purported distribution of marijuana. Fed. R. Evid. 602. Defendants object to this testimony on  
20 the ground that it constitutes improper opinion testimony and impermissible legal conclusions as to  
21 whether the alleged “AA’ Mexican-grown marijuana” was in fact marijuana or was in fact grown in  
22 Mexico. Fed. R. Evid. 701, 702. Defendants further object to this declaration on the ground that it  
23 constitutes improper opinion testimony and impermissible legal conclusions as to whether the alleged  
24 “Mexican-grown marijuana” was in fact marijuana or was in fact grown in Mexico. Fed. R.  
25 Evid. 701, 702. Defendants object to the reference to the alleged purchase of marijuana using an  
26 undercover name, identification, and a phony physician statement as impermissible evidence illegally  
27 obtained by fraud and entrapment that would be unfairly prejudicial to defendants. Fed. R. Evid. 403.

28

1           **Paragraph 17.** Defendants object to paragraph 17, lines 23-26, on the grounds that it is  
2 vague, ambiguous, and lacks foundation. Fed. R. Evid. 602.

3           **Paragraph 18.** Defendants object to paragraph 18, lines 25-8, on the grounds that it is vague,  
4 ambiguous, and lacks foundation. Fed. R. Evid. 602.

5           **Paragraph 19.** Defendants object to paragraph 19, lines 9-15 on the grounds that is vague,  
6 conclusory, and lacks foundation, as this declarant has no personal knowledge of the purported  
7 contents. Fed. R. Evid. 602. The testimony also constitutes improper opinion testimony and  
8 impermissible legal conclusions as to whether the alleged “approximately 10 growing marijuana  
9 plants” were in fact marijuana. Fed. R. Evid. 701, 702. Defendants object on the grounds that the  
10 testimony constitutes inadmissible hearsay to the extent that it relies upon the statement of an  
11 unidentified individual named called “UM2.” Any alleged statement by “UM2” that Special Agent  
12 Nyfeler could purchase and/or smoke cannabis is inadmissible for the truth of the matter asserted.  
13 Fed. R. Evid. 801, 802. Failure to positively identify “UM2” as an agent and/or employee of the  
14 OCBC precludes the government from invoking the admission by party-opponent rule, claiming that  
15 “UM2’s” statements are non-hearsay. Fed. R. Evid 801(d)(2). Accordingly, Defendants object to  
16 these hearsay statements on the grounds that admitting them would fly in the face of the purpose of  
17 the hearsay rule, which is to prevent the admission of an out-of-court statement for which the truth  
18 and veracity of the witness cannot be ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S.  
19 Dist. Col. 1813) (“Its intrinsic weakness, its incompetency to satisfy the mind of the existence of fact,  
20 and the frauds which might be practiced under its cover, combine to support the rule that hearsay  
21 evidence is totally inadmissible.”).

22           **Paragraph 20.** Defendants object to paragraph 20, lines 16-22, on the grounds that is vague,  
23 conclusory, and lacks foundation, as this declarant has no personal knowledge of the purported  
24 contents. Fed. R. Evid. 602. The testimony also constitutes improper opinion testimony and  
25 impermissible legal conclusions as to whether the alleged “Mexican-grown marijuana” and/or the  
26 “marijuana” were in fact marijuana or were in fact grown in Mexico. Fed. R. Evid. 701, 702.  
27 Defendants object on the grounds that the testimony is vague, ambiguous, and lacks foundation as  
28 this declarant has no personal knowledge of any “customers.” Fed. R. Evid. 602. Defendants further



1 object to this paragraph on the ground that it constitutes improper opinion testimony and  
2 impermissible legal conclusions as to whether the 8-10 other people standing in line were in fact  
3 walking “to the sales counter to purchase marijuana.” Fed. R. Evid. 701, 702. Defendants object on  
4 the grounds that the testimony constitutes inadmissible hearsay to the extent that it relies upon the  
5 alleged statement of an unidentified individual named called “UM2.” Any alleged statement and/or  
6 nonverbal conduct intended as an assertion by “UM2” that Special Agent Nyfeler could purchase  
7 and/or smoke cannabis is inadmissible for the truth of the matter asserted. Fed. R. Evid. 801, 802.  
8 Failure to positively identify “UM2” as an agent and/or employee of the OCBC precludes the  
9 government from invoking the admission by party-opponent rule, claiming that “UM2’s” statements  
10 are non-hearsay. Fed. R. Evid 801(d)(2). Accordingly, defendants object to these hearsay statements  
11 and nonverbal assertions on the grounds that admitting them would fly in the face of the purpose of  
12 the hearsay rule, which is to prevent the admission of an out-of-court statement for which the truth  
13 and veracity of the witness cannot be ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S.  
14 Dist. Col. 1813) (“Its intrinsic weakness, its incompetency to satisfy the mind of the existence of fact,  
15 and the frauds which might be practiced under its cover, combine to support the rule that hearsay  
16 evidence is totally inadmissible.”).

17 **Paragraph 21.** Defendants object to paragraph 21, line 23, to the extent that the testimony  
18 implies the purchase of marijuana using a card obtained in reliance upon a phony physician statement  
19 as impermissible evidence illegally obtained by fraud and entrapment that would be unfairly  
20 prejudicial to defendants. Fed. R. Evid. 403.

21 **Paragraph 22.** Defendants object to paragraph 22, lines 24-26, on the grounds that the  
22 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
23 the alleged “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

24 **Paragraph 23.** Defendants object to paragraph 23, line 1, on the grounds that the testimony  
25 constitutes improper opinion testimony and impermissible legal conclusions as to whether the alleged  
26 “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

27 **Paragraph 24.** Defendants object to paragraph 24, lines 4-6, on the grounds that the  
28 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether

1 the alleged “undercover purchase of marijuana” and/or alleged “distribution of marijuana” was in fact  
2 marijuana. Fed. R. Evid. 701, 702. Defendants object to the reference to the alleged purchase of  
3 marijuana using a card obtained in reliance upon a phony physician statement as impermissible  
4 evidence illegally obtained by fraud and entrapment that would be unfairly prejudicial to defendants.  
5 Fed. R. Evid. 403.

6 **Paragraph 25.** Defendants object to paragraph 25, lines 7-10, on the grounds that the  
7 testimony is vague, ambiguous, and lacks foundation as this declarant has no personal knowledge of  
8 any purported distribution of marijuana. Fed. R. Evid. 602. Defendants object to this testimony on  
9 the ground that it constitutes improper opinion testimony and impermissible legal conclusions as to  
10 whether the alleged “one-eighth ounce of marijuana with the brand name ‘House Special’” was in  
11 fact marijuana.” Fed. R. Evid. 701, 702. Defendants object to the reference to the alleged purchase  
12 of marijuana using an undercover name, identification, and a phony physician statement as  
13 impermissible evidence illegally obtained by fraud and entrapment that would be unfairly prejudicial  
14 to defendants. Fed. R. Evid. 403.

15 **Paragraph 27.** Defendants object to paragraph 27, lines 23-26, on the grounds that it is  
16 vague, ambiguous, and lacks foundation. Fed. R. Evid. 602.

17 **Paragraph 28.** Defendants object to paragraph 28, lines 1-8, on the grounds that it is vague,  
18 ambiguous, and lacks foundation. Fed. R. Evid. 602.

19 **Paragraph 29.** Defendants object to paragraph 29, lines 9-15 on the grounds that is vague,  
20 conclusory, and lacks foundation, as this declarant has no personal knowledge of the purported  
21 contents. Fed. R. Evid. 602. The testimony also constitutes improper opinion testimony and  
22 impermissible legal conclusions as to whether the alleged “Small Hash Oil,” the alleged “Large Hash  
23 Oil,” the alleged “Afghani Hash,” and/or the alleged “live marijuana plants” were in fact marijuana.  
24 Fed. R. Evid. 701, 702.

25 **Paragraph 30.** Defendants object to paragraph 30, lines 16-20, on the grounds that is vague,  
26 conclusory, and lacks foundation, as this declarant has no personal knowledge of the purported  
27 contents. Fed. R. Evid. 602. Defendants object on the grounds that the testimony constitutes  
28 inadmissible hearsay to the extent that it relies upon the statement of an unidentified individual

1 named called “UM1.” Any statement by “UM1” that Special Agent Nyfeler could purchase cannabis  
2 is inadmissible for the truth of the matter asserted. Fed. R. Evid. 801, 802. Failure to positively  
3 identify “UM1” as an agent and/or employee of the OCBC precludes the government from invoking  
4 the admission by party-opponent rule, claiming that “UM1’s” statements are non-hearsay. Fed. R.  
5 Evid 801(d)(2). Accordingly, defendants object to these hearsay statements on the grounds that  
6 admitting them would fly in the face of the purpose of the hearsay rule, which is to prevent the  
7 admission of an out-of-court statement for which the truth and veracity of the witness cannot be  
8 ascertained. *See Queen v. Hepburn*, 7 Cranch 290, 296 (U.S. Dist. Col. 1813) (“Its intrinsic  
9 weakness, its incompetency to satisfy the mind of the existence of fact, and the frauds which might be  
10 practiced under its cover, combine to support the rule that hearsay evidence is totally inadmissible.”).  
11 Defendants further object to the extent that the testimony implies the alleged purchase of marijuana  
12 using a card obtained in reliance upon a phony physician statement as impermissible evidence  
13 illegally obtained by fraud and entrapment that would be unfairly prejudicial to defendants. Fed. R.  
14 Evid. 403.

15 **Paragraph 31.** Defendants object to paragraph 31, lines 22-23, on the grounds that the  
16 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
17 the alleged “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702.

18 **Paragraph 32.** Defendants object to paragraph 32, line 24, on the grounds that the testimony  
19 constitutes improper opinion testimony and impermissible legal conclusions as to whether the alleged  
20 “bag of suspected marijuana” was in fact marijuana. Fed. R. Evid. 701, 702. Defendants further  
21 object to the extent that the testimony implies the alleged purchase of marijuana using a card obtained  
22 in reliance upon a phony physician statement as impermissible evidence illegally obtained by fraud  
23 and entrapment that would be unfairly prejudicial to defendants. Fed. R. Evid. 403.

24 **Paragraph 33.** Defendants object to paragraph 33, lines 1-3, on the grounds that the  
25 testimony constitutes improper opinion testimony and impermissible legal conclusions as to whether  
26 the alleged “undercover purchase of marijuana” and/or alleged “distribution of marijuana” was in fact  
27 marijuana. Fed. R. Evid. 701, 702. Defendants object to the reference to the alleged purchase of  
28 marijuana using a card obtained in reliance upon a phony physician statement as impermissible

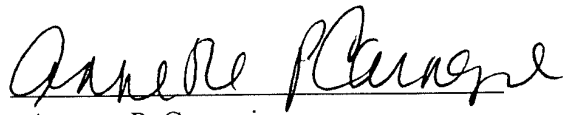
1 evidence illegally obtained by fraud and entrapment that would be unfairly prejudicial to defendants.  
2 Fed. R. Evid. 403.

3 **CONCLUSION**

4 For the foregoing reasons, the government's motion for summary judgment and permanent  
5 injunctive relief lack evidentiary support and therefore must be denied.

6 Dated: March 8, 2002

7 ANNETTE P. CARNEGIE  
8 MORRISON & FOERSTER LLP

9  
10 By:   
11 Annette P. Carnegie

12 Attorneys for Defendants  
13 OAKLAND CANNABIS BUYERS'  
14 COOPERATIVE AND JEFFREY JONES  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28