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**FILED**

JUN 10 2002

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

JUN 11 2002

ENTERED BY COURT CLERK

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

Nos. C 98-00085 CRB  
C 98-00086 CRB  
C 98-00087 CRB  
C 98-00088 CRB ✓  
C 98-00245 CRB

v.

CANNABIS CULTIVATOR'S CLUB, et al.,  
Defendants.

**MEMORANDUM AND ORDER**

AND RELATED ACTIONS

By Order dated May 3, 2000, the Court granted the government's motion for summary judgment on the ground that it is undisputed that defendants violated the Controlled Substances Act in 1997. Having determined that the government is entitled to judgment, the Court must now determine what remedy, if any, should be imposed. The government seeks a permanent injunction on the same terms as the preliminary injunction.

**Standard For A Permanent Injunction**

To be entitled to a permanent injunction a plaintiff must actually succeed on the merits. See Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 546 n.12 (1987). As the Court previously ruled, the government is entitled to summary judgment on its claim

1 that the clubs distributed marijuana in violation of the Controlled Substances Act.

2 The government must also show that it has no adequate legal remedy. See  
3 Continental Airlines v. Intra Brokers, Inc., 24 F.3d 1099, 1102 (9th Cir. 1994). Irreparable  
4 injury is one basis for showing the inadequacy of the legal remedy. See id. The Ninth  
5 Circuit has held that in statutory enforcement actions, such as this, irreparable injury is  
6 presumed. See Miller v. California Pacific Medical Center, 19 F.3d 449, 459 (9th Cir. 1994)  
7 (en banc); see also 5 F.Supp.2d at 1103 (same). If there is no threat of future wrongful  
8 conduct, however, a legal remedy will be adequate. To put it another way, the purpose  
9 of a permanent injunction is not punishment but rather deterrence of future behavior. See  
10 Orantes-Hernandez v. Thornburgh, 919 F.2d 549, 564 (9th Cir. 1990) (“Permanent injunctive  
11 relief is warranted where . . . defendant’s past and present misconduct indicates a strong  
12 likelihood of future violations.”).

13 That the government has succeeded on the merits and is entitled to a presumption of  
14 an inadequate legal remedy does not require the Court to enter a permanent injunction.  
15 When the United States Supreme Court reviewed the preliminary injunction order in this  
16 case, it held that “[b]ecause the District Court’s use of equitable power is not textually  
17 required by any ‘clear and valid legislative command,’ the court did not have to issue an  
18 injunction.” 121 S.Ct. at 1721. The Court explained further that

19 the mere fact that the District Court had discretion does not suggest that the  
20 District Court, when evaluating the motion to modify the injunction, could  
21 consider any and all factors that might relate to the public interest or the  
22 conveniences of the parties, including the medical needs of the Cooperative’s  
23 patients. . . . A district court cannot, for example, override Congress’ policy  
24 choice, articulated in a statute, as to what behavior should be prohibited. . . .  
25 Their choice . . . is simply whether a particular means of enforcing the statute  
26 should be chosen over another permissible means; their choice is not whether  
27 enforcement is preferable to no enforcement at all. Consequently, when a  
28 court of equity exercises its discretion, it may not consider the advantages and  
disadvantages of nonenforcement of the statute, but only the advantages and  
disadvantages of “employing the extraordinary remedy of injunction.” . . . To  
the extent the district court considers the public interest and the conveniences  
of the parties, the court is limited to evaluating how such interest and  
conveniences are affected by the selection of an injunction over other  
enforcement mechanisms.

Id. at 1721-22. The Supreme Court thus held that this Court cannot decline to enter an  
injunction pursuant to 21 U.S.C. section 882(d) because the Court believes seriously ill

1 individuals should be permitted to legally obtain marijuana from the clubs. The Court can  
2 decline to enter a permanent injunction only if enforcement by some other means, here,  
3 criminal prosecution, is more appropriate than the requested equitable relief.

4 **DISCUSSION**

5 The first issue is whether the government has demonstrated a threat of future unlawful  
6 conduct. If not, there is no need for the Court to exercise its extraordinary equitable powers  
7 for there is no conduct to deter. The government has met its burden. The clubs are still in  
8 existence and their very purpose is to distribute marijuana to seriously ill patients.

9 At the beginning of this case, one of the defendant clubs, Flower Therapy, voluntarily  
10 closed its doors and agreed to stop distributing marijuana. In light of its conduct and its  
11 representation to the Court, the club no longer posed a threat of future unlawful conduct.  
12 Accordingly, the Court dismissed the government's case against this club. In connection  
13 with the motion for a permanent injunction, the Court gave all of the remaining defendant  
14 clubs the opportunity to present evidence that they, too, do not pose a threat of future  
15 unlawful conduct, that is, distribution of marijuana. None of the clubs came forward with  
16 such evidence or even the suggestion that they would not distribute marijuana in the absence  
17 of an injunction. After considering all the evidence presented by the government, the Court  
18 finds that in the absence of an injunction, the defendants are likely to resume distributing  
19 marijuana in violation of the Controlled Substances Act.

20 The critical issue then is whether, in light of the available criminal enforcement  
21 remedy, the Court should decline to enter a permanent injunction. The government first  
22 argues that because it has chosen to proceed by means of civil enforcement, the Court does  
23 not have discretion to not impose the injunction; in other words, for the Court to decline to  
24 issue the injunction in favor of criminal prosecution would be tantamount to declining to  
25 enforce the statute at all since the government has not initiated criminal proceedings. If the  
26 government is correct, however, the government--not the district court--would ultimately  
27 exercise the discretion as to whether to issue the injunction; the government could limit the  
28 district court's discretion by simply not initiating criminal proceedings. The Supreme Court,

1 however, specifically rejected this outcome: “the District Court in this case had discretion.”  
2 Oakland Cannabis Buyer’s Cooperative, 531 U.S. at 496. “[W]ith respect to the Controlled  
3 Substances Act, criminal enforcement is an alternative, and indeed the customary, means of  
4 ensuring compliance with the statute. Congress’ resolution of the policy issues can be (and  
5 usually is) upheld without an injunction.” Id. at 497.

6 Thus, the fact that the government has not chosen to proceed criminally does not  
7 require the Court to enter a permanent injunction; rather, the Court should consider the  
8 advantages and disadvantages of “employing the extraordinary remedy of injunction,” and  
9 “[t]o the extent the district court considers the public interest and the conveniences of the  
10 parties, the court is limited to evaluating how such interest and conveniences are affected by  
11 the selection of an injunction over other enforcement mechanisms,” namely, criminal  
12 prosecution. Id. at 497-98.

13 Defendants contend that the Court should not proceed with civil enforcement because  
14 the procedural protections are not as great as in a criminal prosecution. For example, if the  
15 government charges a defendant with violating the injunction, the defendant does not have a  
16 right to a jury trial in the absence of a genuine dispute of fact, and the burden of proof is less  
17 exacting; the government need only prove the violation by a preponderance of the evidence  
18 rather than beyond a reasonable doubt.

19 The reduced procedural protections available in a civil proceeding might be a reason  
20 to decline civil enforcement in certain circumstances. For example, if there is a genuine  
21 dispute as to whether a defendant is in fact violating the law, a court might decide that  
22 criminal enforcement--with its more vigorous burden of proof--is a more appropriate method  
23 of enforcement. But those are not the circumstances here. Defendants do not deny that they  
24 distributed marijuana; there is no genuine factual dispute as to their violation of the law.  
25 Defendants simply disagree with the law.

26 Moreover, the reduced procedural protections available in a civil case reflect the far  
27 less serious consequences of a judgment in favor of a plaintiff in a civil proceeding. The  
28 result of the government prevailing here is that the clubs will be enjoined from distributing

1 marijuana. In a criminal case the clubs may still be shut down, but in addition, the individual  
2 defendants may lose their liberty. Given the amount of marijuana distributed by the clubs,  
3 the potential prison time faced by the individual defendants under the United States  
4 Sentencing Guidelines is significant.<sup>1</sup> Furthermore, the fact that defendants were distributing  
5 marijuana to seriously ill patients is not a defense. See Oakland Cannabis Buyer's  
6 Cooperative, 532 U.S. at 494-95. It is thus unsurprising that at oral argument counsel for  
7 defendants Marin Alliance for Medical Marijuana and Lynette Shaw stated that these  
8 defendants prefer that the Court and the government proceed with a civil injunction rather  
9 than criminal prosecution.

10 Defendants also argue that a civil injunction interferes with the rights of seriously ill  
11 patients. A criminal prosecution of the clubs and its leaders, however, would do the same.  
12 This Court cannot decline to issue the injunction in favor of non-enforcement of the statute.  
13 See Oakland Cannabis Buyer's Cooperative 531 U.S. at 498 ("Courts of equity cannot, in  
14 their discretion, reject the balance that Congress has struck in a statute. Their choice . . . is  
15 simply whether a particular means of enforcing the statute should be chosen over another  
16 permissible means; their choice is not whether enforcement is preferable to no enforcement  
17 at all.").

### 18 CONCLUSION

19 In light of the serious penalties faced by the individual defendants in a criminal  
20 proceeding and the unavailability of a medical necessity defense, the Court concludes in its  
21 discretion that civil enforcement of the Controlled Substances Act in the circumstances of  
22 these related cases is appropriate. Accordingly, the Court will issue permanent injunctions in  
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25 <sup>1</sup>For example, assuming an individual defendant does not have any prior criminal history,  
26 and is convicted of distributing, or aiding and abetting the distribution of, 10 kilograms of  
27 marijuana, he would fall within a sentencing range of 21 to 27 months. U.S.S.G. § 2D1.1(c).  
28 A conviction involving 80 kilograms of marijuana would result in a sentence of almost five  
years. *Id.* Moreover, under the Controlled Substances Act certain mandatory minimum  
sentences apply: a conviction involving 100 or more marijuana plants regardless of weight  
carries a five-year minimum sentence, 21 U.S.C. § 841(b)(1)(B)(vii), and a conviction involving  
1000 such plants requires a 10-year minimum sentence. 21 U.S.C. § 841(b)(1)(A)(vii).

1 these related actions enjoining defendants from the distribution of marijuana in violation of  
2 the Controlled Substances Act.<sup>2</sup>

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4 **IT IS SO ORDERED.**

5 Dated: June 8, 2002

  
6 CHARLES R. BREYER  
7 UNITED STATES DISTRICT JUDGE

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27 <sup>2</sup>Plaintiff filed these related actions to enjoin the distribution of marijuana, not possession  
28 for personal use. The issue of personal use is not before the Court and the Court declines to reach that issue.

United States District Court  
for the  
Northern District of California  
June 12, 2002

\* \* CERTIFICATE OF SERVICE \* \*

Case Number:3:98-cv-00088

USA

vs

Oakland Cannabis

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 12, 2002, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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