1 2 3 4 5 6	FRANK W. HUNGER Assistant Attorney General ROBERT S. MUELLER, III (Cal. BN 59775) United States Attorney DAVID J. ANDERSON ARTHUR R. GOLDBERG MARK T. QUINLIVAN (D.C. BN 442782) U.S. Department of Justice Civil Division; Room 1048 901 E Street, N.W. Washington, D.C. 20530 Telephone: (202) 514-3346	
8	Attorneys for Plaintiff	
9	FOR THE NORTHERN	ES DISTRICT COURT DISTRICT OF CALIFORNIA
10	SAN FRANCIS	CO HEADQUARTERS
11	UNITED STATES OF AMERICA,	
12	Plaintiff,	Nos. C 98-0085 CRB C 98-0086 CRB
13	v.	C 98-0087 CRB C 98-0088 CRB
14	CANNABIS CULTIVATOR'S CLUB;	C 98-0245 CRB
15	and DENNIS PERON,	PLAINTIFF'S <u>EX PARTE</u> APPLICATION FOR LEAVE TO FILE A PROTECTIVE
16	Defendants.	ORDER LOG OUT OF TIME IN CASE NO. C 98-0088 CRB
17	AND RELATED ACTIONS	Date: None set
18		Time: None set Courtroom of the Hon. Charles R. Breyer
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27	Plaintiff's Ex Parte Application	
28	Case No. C 98-0088 CRB	

NOTICE

Pursuant to Local Rule 7-11, plaintiff, the United States of America, brings this ex parte application to file a Protective Order Log out of time. This ex parte application is necessary because counsel for the government apparently (but inadvertently) overlooked or misplaced the Protective Order entered by the Court on October 8, 1998 and, consequently, did not file a log of all copies of the Declaration of Michael M. Alcalay, M.D., M.P.H., along with the Exhibit attached thereto ("Alcalay Declaration"), as was required by the Protective Order. Upon learning of this oversight on November 25, 1998, counsel for the government immediately conducted a search to locate any and all copies of the Alcalay Declaration in the possession of the government, and has now provided counsel for defendants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones Court with these copies. The United States now seeks leave to file the Protective Order Log out of time.

In support of this ex parte application, the United States states as follows:

- 1. On October 8, 1998, the Court granted the Defendants' [Proposed] Protective Order, which required, inter alia, that plaintiff return to defendants the Alcalay Declaration and all copies thereto. Defendant's Protective Order ¶ 5 (attached as Exhibit 1 to Declaration of Mark T. Quinlivan ("Quinlivan Dec."). The Protective Order further required that plaintiff "prepare and provide to the Court within seven days a log of all copies made of this same Information, and to prepare and maintain a log of all copies that may be made of this same Information in the future." Id.
- 2. On October 13, 1998, defendants served plaintiff with the Protective Order by facsimile transmission and by first-class mail. The Protective Order was attached as Exhibit A to a Notice of Entry of Protective Order. Quinlivan Dec. ¶ 3 & Exhibit 2.
- 3. Counsel for the government apparently, but inadvertently, either overlooked or misplaced the Notice of Protective Order upon its receipt. <u>Id.</u> ¶ 4. The Notice of Protective Order

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consequently was placed in the voluminous case file in these related actions without having been first examined by counsel for the government. <u>Id.</u>

- 4. On November 25, 1998, one day before the Thanksgiving holiday, counsel for the government was reviewing the case file in these related actions, and came upon the Notice of Protective Order. Id. ¶ 5. Upon reading and examining the attached Protective Order, counsel for the government immediately contacted all persons within the Department of Justice, including the Drug Enforcement Administration ("DEA"), to whom the Alcalay Declaration may have been circulated, and requested that any and all copies of the Alcalay Declaration be returned to counsel. Id. Counsel for the government further conducted a search of his own office, as well as the official case file in these related actions, and retrieved two copies of the Alcalay Declaration. Id.
- 5. In response to the search request of November 25, 1998 for any and all copies of the Alcalay Declaration, counsel for the government was provided with four copies of the Alcalay Declaration from different components of the Department of Justice, including one copy that was provided by the Office of Chief Counsel of the Drug Enforcement Administration. <u>Id.</u> ¶ 6.1
- 6. Upon receiving these copies, and upon receiving assurances from other components of the Department of Justice that no other copies of the Alcalay Declaration remained, counsel for the government provided counsel for the defendant, Morrison & Foerster LLP, with the six copies of the Alcalay Declaration in the possession of the government by overnight delivery. Id. ¶ 7.
- 7. The United States now seeks leave to file a Protective Order Log, as required by Defendant's Protective Order, out of time. <u>Id.</u> ¶ 8. The [Proposed] Protective Order Log accompanies this <u>ex parte</u> application. <u>Id.</u>
- 8. On December 7, 1998, counsel for the government contacted counsel for the defendants, Annette Carnegie, Esq., informed her of the foregoing events, as well as the

¹ Counsel for the government was informed in writing by the Office of the Chief Counsel of the DEA that the copy of the Alcalay Declaration that was provided to the Office of Chief Counsel was not further circulated within the DEA. <u>Id.</u>

1	government's intention to file an ex parte application to file a Protective Order Log, as required by	
2	the Protective Order, out of time. Id. ¶ 8. Ms. Carnegie informed counsel for the government that	
3	defendants did not object to the filing of this application. <u>Id.</u>	
4	WHEREFORE, the United States respectfully seeks leave to file the accompanying	
5	[Proposed] Protective Order Log out of time.	
6	Respectfully submitted,	
7	FRANK W. HUNGER	
8	Assistant Attorney General	
9	MICHAEL J. YAMAGUCHI United States Attorney	
10	Omted States Fittorias	
11	MATA	
12	Mud / Win/inn DAVID J. ANDERSON	
13	ARTHUR R. GOLDBERG MARK T. QUINLIVAN	
14	U.S. Department of Justice Civil Division, Room 1048	
15	901 E St., N.W. Washington, D.C. 20530	
16	Tel: (202) 514-3346	
17	Attorneys for Plaintiff UNITED STATES OF AMERICA	
18	Dated: December 8, 1998	
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CERTIFICATE OF SERVICE 1 I, Mark T. Quinlivan, hereby certify that on this 9th day of December, 1998, I caused to be 2 served a copy of the foregoing Plaintiff's Ex Parte Application to File a Protective Order Log Out 3 of Time in Case No. C 98-0088 CRB, and the accompanying [Proposed] Order, [Proposed] 4 Protective Order Log, and Declaration of Mark T. Quinlivan, upon the following counsel for defendants Oakland Cannabis Buyers' Cooperative and Jeffrey Jones, by overnight delivery: 6 7 James J. Brosnahan Annette P. Carnegie Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105 10 Robert A. Raich 1970 Broadway, Suite 1200 11 Oakland, CA 94612 12 Gerald F. Uelman Santa Clara University 13 School of Law Santa Clara, CA 95053 14 15 16 17 MARK T. QUINLIVAN 18 19 20 21 22 23 24 25 26

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