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United States Attorney  
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5 Civil Division; Room 1048  
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Telephone: (202) 514-3346

7 Attorneys for Plaintiff  
8

9 UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO HEADQUARTERS

11 UNITED STATES OF AMERICA, )  
12 )  
Plaintiff, )  
13 )  
v. )  
14 )  
CANNABIS CULTIVATOR'S CLUB; )  
15 and DENNIS PERON, )  
16 )  
Defendants. )  
17 )  
AND RELATED ACTIONS )  
18 )

Nos. C 98-0085 CRB  
C 98-0086 CRB  
C 98-0087 CRB  
C 98-0088 CRB  
C 98-0245 CRB  
  
DECLARATION OF  
MARK T. QUINLIVAN

19 I, MARK T. QUINLIVAN, do hereby declare and say as follows:

20 1. I am currently employed as a Trial Attorney in the Federal Programs Branch, Civil  
21 Division, United States Department of Justice, and am counsel of record in the above-captioned  
22 cases. I make this declaration based on personal knowledge, and on information made available  
23 to me in the course of my official duties.

24 2. On October 8, 1998, the Court granted the Defendants' [Proposed] Protective Order,  
25 which required, inter alia, that plaintiff return to defendants the Alcalay Declaration and all copies  
26 thereto. The Protective Order further required that plaintiff "prepare and provide to the Court  
27

1 within seven days a log of all copies made of this same Information, and to prepare and maintain a  
2 log of all copies that may be made of this same Information in the future." A copy of Defendant's  
3 Protective Order is attached hereto as Exhibit 1.

4 2. On October 13, 1998, defendants served plaintiff with the Protective Order by facsimile  
5 transmission and by first-class mail. The Protective Order was attached as Exhibit A to a Notice  
6 of Entry of Protective Order. A copy of the Notice of Protective Order is attached hereto as  
7 Exhibit 2.

8 3. I apparently, but inadvertently, either overlooked or misplaced the Notice of Protective  
9 Order upon its receipt. The Notice of Protective Order consequently was placed in the  
10 voluminous case file in these related actions without having been first examined by me. I deeply  
11 regret this oversight on my part.

12 4. On November 25, 1998, one day before the Thanksgiving holiday, I reviewed the case  
13 file in these related actions, and came upon the Notice of Protective Order. Upon reading and  
14 examining the Protective Order, which was attached to the Notice of Protective Order, I  
15 immediately contacted all persons within the Department of Justice, including the Drug  
16 Enforcement Administration ("DEA"), to whom I may have circulated the Alcalay Declaration,  
17 and requested that any and all copies of the Alcalay Declaration be returned to counsel. I further  
18 conducted a search of my own office, as well as the official case file in these related actions, and  
19 retrieved two copies of the Alcalay Declaration.

20 5. In response to the search request of November 25, 1998 for any and all copies of the  
21 Alcalay Declaration, I was provided with four copies of the Alcalay Declaration from different  
22 components of the Department of Justice, including one copy that was provided by the Office of  
23 Chief Counsel of the Drug Enforcement Administration. I further was informed in writing by the  
24 Office of the Chief Counsel of the DEA that the copy of the Alcalay Declaration that I had  
25 provided to this office was not further circulated within the DEA.

1 6. Upon receiving these copies, and upon receiving assurances from other components of  
2 the Department of Justice that no other copies of the Alcalay Declaration remained, I provided  
3 counsel for the defendant, Morrison & Foerster LLP, with the six copies of the Alcalay  
4 Declaration in the possession of the government, by overnight delivery.

5 7. The United States is now seeks leave to file a Protective Order Log, as required by  
6 Defendant's Protective Order, out of time. The [Proposed] Protective Order Log accompanies this  
7 ex parte application.

8 8. On December 7, 1998, I contacted counsel for the defendants, Annette Carnegie, Esq.,  
9 informed her of the foregoing events, as well as the government's intention to file an ex parte  
10 application to file a Protective Order Log, as required by the Protective Order, out of time. Ms.  
11 Carnegie informed me that defendants did not object to the filing of this application.

12 I declare under penalty of perjury that the foregoing is true and correct.

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15   
16 MARK T. QUINLIVAN

17 Executed this 8th day of December 1998  
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**EXHIBIT 1**

ORIGINAL

RECEIVED

OCT 12 1998

ANDREW A. STECKLER

1 ROBERT A. RAICH (State Bar No. 147515)  
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Telephone: (415) 268-7000

11 Attorneys for Defendants  
OAKLAND CANNABIS BUYERS'  
12 COOPERATIVE and JEFFREY JONES

RECEIVED

SEP 30 1998

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

FILED

OCT 08 1998

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

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

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 CANNABIS CULTIVATOR'S CLUB, et al.,

21 Defendants.

No. C 98-0085 CRB  
C 98-0086 CRB  
C 98-0087 CRB  
C 98-0088 CRB  
C 98-0245 CRB

DEFENDANTS' [PROPOSED]  
PROTECTIVE ORDER

Date: October 5, 1998  
Time: 2:30 p.m.  
Courtroom: 8  
Hon. Charles R. Breyer

23 AND RELATED ACTIONS.  
24

ORDERS

SUBMITTING COUNSEL ARE  
DIRECTED TO SERVE THIS ORDER UPON  
ALL OTHER PARTIES IN THIS ACTION



1 For good cause, the Court hereby orders that a protective order be entered in this action as  
2 follows:

3 1. This Protective Order shall govern all documents, writings and testimony in this action  
4 designated as "COVERED BY PROTECTIVE ORDER" together with all information contained  
5 therein or derived therefrom, and all copies, portions, excerpts, abstracts or summaries thereof  
6 (hereinafter collectively referred to as "Information") arising from individual patient medical care  
7 (including but not limited to patients' physician's names or other identifying information;  
8 information concerning physician referrals to dispensaries and/or their authorizing or assenting to  
9 ~~cannabis treatment~~; patient medical records or charts; physician status reports; notes made by  
10 physicians, nurses, physician assistants or other medical staff, letters or reports from physicians,  
11 nurses, physician assistants or other medical staff, reports of physical exams; and reports of medical  
12 tests).

regarding *communications, recommendations or approvals*  
*medical cannabis*

13 2. Information "COVERED BY PROTECTIVE ORDER" shall be used solely for  
14 conduct of this litigation, and not for any other purpose. Information "COVERED BY  
15 PROTECTIVE ORDER" shall not be disclosed to anyone except as provided in this Protective Order.  
16 In particular, Information "COVERED BY PROTECTIVE ORDER" shall not be disclosed to any  
17 employee or agent of the Drug Enforcement Administration, the Federal Bureau of Investigation, or  
18 any federal, state or local law enforcement agency unless specifically provided for in this Protective  
19 Order.

20 3. Notwithstanding paragraph 2, Information "COVERED BY PROTECTIVE ORDER"  
21 may be disclosed to the following persons who are participating in the conduct of this action on  
22 behalf of the plaintiff after they have signed and sent to defendants' counsel the form attached hereto  
23 stating their agreement to be bound and abide by the provisions of this Protective Order:

24 United States Department of Justice

- 25 Frank W. Hunger, Assistant Attorney General  
26 Robert S. Mueller III, United States Attorney  
27 David J. Anderson  
28 Arthur R. Goldberg  
Mark T. Quinlivan

1        Defendants' Counsel

2        James J. Brosnahan  
3        Annette P. Carnegie  
4        Andrew A. Steckler  
5        Christina Kirk-Kazhe  
6        Robert A. Raich  
7        Gerald F. Uelmen


8 Information "COVERED BY PROTECTIVE ORDER" may also be disclosed, to the extent  
9 reasonably necessary in conducting this litigation, to the secretaries, paralegal assistants, and legal  
10 assistants of the above-named persons after they have signed and sent to defendants' counsel the form  
11 attached hereto stating their agreement to be bound and abide by the provisions of this Protective  
12 Order; and to Court officials involved in this litigation (including court reporters, persons operating  
13 video recording equipment at depositions, and any special master appointed by the Court). Provided  
14 that the individual to whom disclosure is made has signed and sent to defendants' counsel the form  
15 attached hereto stating his or her agreement to be bound and abide by the provisions of the Protective  
16 Order, such Information may also be disclosed to persons noticed for depositions or designated as  
17 trial or deposition witnesses to the extent reasonably necessary in preparing to testify; to such other  
18 persons agreed to by defendants' counsel in writing in advance of disclosure (such agreement shall  
19 not be unreasonably withheld); and to such other persons designated by the Court in the interest of  
20 justice.

21        4.        The inadvertent or unintentional disclosure to plaintiff or their counsel by defendants  
22 or their counsel of Information "COVERED BY PROTECTIVE ORDER," regardless of whether the  
23 Information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in  
24 part of defendants' claim that such Information is covered by this Protective Order. In the event of  
25 inadvertent or unintentional disclosure of Information "COVERED BY PROTECTIVE ORDER,"  
26 defendants shall give prompt notification to plaintiff after learning of an inadvertent or unintentional  
27 disclosure, and shall provide plaintiff with new copies of the inadvertently or unintentionally  
28 produced documents, re-marked as "COVERED BY PROTECTIVE ORDER." The documents  
inadvertently or unintentionally produced without such designation shall then be returned promptly to  
defendants.

1           5.       The Declaration of Michael M. Alcalay, M.D., M.P.H., along with the Exhibit A  
2 attached thereto, filed September 14, 1998, is hereby deemed by the Court to be an inadvertent or  
3 unintentional disclosure of Information "COVERED BY PROTECTIVE ORDER," as described in  
4 paragraph 4. As such, this Information shall be returned promptly to the defendants. Plaintiff is  
5 hereby ordered to return to defendants the Declaration of Michael M. Alcalay, M.D., M.P.H. along  
6 with the Exhibit A attached thereto, and it is ordered to return to defendants all copies made of this  
7 same Information. Plaintiff is hereby further ordered to prepare and provide to the Court within  
8 seven days a log of all copies made of this same Information, and to prepare and maintain a log of all  
9 copies that may be made of this same Information in the future. This same Information shall be  
10 deemed "COVERED BY PROTECTIVE ORDER" from and including September 14, 1998, and into  
11 the future. The Court will receive, and orders served on plaintiff and all parties, the Amended  
12 Declaration of Michael M. Alcalay, M.D., M.P.H., dated September 30, 1998.

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14           IT IS SO ORDERED.

15  
16 Dated: 10-8-98

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UNITED STATES DISTRICT COURT JUDGE



APPENDIX TO PROTECTIVE ORDER

AGREEMENT TO ABIDE BY TERMS OF PROTECTIVE ORDER

I have received and read a copy of the foregoing Protective Order. I hereby agree to be bound and abide by the terms of the Protective Order and will not disclose any Information designated as "COVERED BY PROTECTIVE ORDER" as defined in the Protective Order entered into between the parties to any other person, except under the terms specified in the Protective Order.

Dated:

---

**EXHIBIT 2**

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19 OAKLAND CANNABIS BUYERS'  
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17 UNITED STATES OF AMERICA,  
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19 Plaintiff,  
20 v.  
21 CANNABIS CULTIVATOR'S CLUB, et al.,  
22 Defendants.  
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No. C 98-0085 CRB  
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**NOTICE OF ENTRY OF PROTECTIVE ORDER**

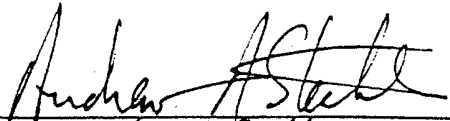
AND RELATED ACTIONS.

1 PLEASE TAKE NOTICE that on October 8, 1998 the Honorable Charles R. Breyer entered  
2 the enclosed Protective Order.

3 Dated: October 13, 1998

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JAMES J. BROSNAHAN  
ANNETTE P. CARNEGIE  
ANDREW A. STECKLER  
CHRISTINA KIRK-KAZHE  
MORRISON & FOERSTER LLP

By:   
Andrew A. Steckler

Attorneys for Defendants  
OAKLAND CANNABIS BUYERS'  
COOPERATIVE AND JEFFREY JONES

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**PROOF OF SERVICE BY FACSIMILE TRANSMISSION**  
**(N.D. Local Rule 5-3)**

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years; and that the document described below was transmitted by facsimile transmission to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or she has filed in the cause.

I further declare that on the date hereof I served a copy of:

**NOTICE OF ENTRY OF PROTECTIVE ORDER**

on the following by sending a true copy from Morrison & Foerster's facsimile transmission telephone number (415) 268-7520 and that the transmission was reported as complete and without error. The transmission report, which is attached to this proof of service, was properly issued by the transmitting facsimile machine.

Opposing Counsel:

Mark T. Quinlivan  
U.S. Department of Justice  
901 E Street, N.W., Room 1048  
Washington, D.C. 20530  
(202) 616-8470

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed at San Francisco, California, this 13th day of October, 1998

---

Susan Romo  
(typed)

---

(signature)

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**PROOF OF SERVICE BY OVERNIGHT DELIVERY  
(N.D. Local Rule 5-3)**

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California, 94105; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison & Foerster's business practice the document described below will be deposited in a box or other facility regularly maintained by United Parcel Service or delivered to an authorized courier or driver authorized by United Parcel Service to receive documents on the same date that it is placed at Morrison & Foerster for collection.

I further declare that on the date hereof I served a copy of:

**NOTICE OF ENTRY OF PROTECTIVE ORDER**

on the following by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows for collection by United Parcel Service at Morrison & Foerster LLP, 425 Market Street, San Francisco, California, 94105, in accordance with Morrison & Foerster's ordinary business practices:

SEE ATTACHED SERVICE LIST

SERVICE LIST FOR  
OCTOBER 13, 1998 COURT FILING

Opposing Counsel:

Mark T. Quinlivan  
U.S. Department of Justice  
901 E Street, N.W., Room 1048  
Washington, D.C. 20530

Intevenor-Patients

Thomas V. Loran III, Esq.  
Pillsbury Madison & Sutro LLP  
235 Montgomery Street  
San Francisco, CA 94104

Cannabis Cultivator's Club, et al.

J. Tony Serra/Brendan R. Cummings  
Serra, Lichter, Daar, Bustamante,  
Michael & Wilson  
Pier 5 North, The Embarcadero  
San Francisco, CA 94111

Marin Alliance for Medical Marijuana, et al.

William G. Panzer  
370 Grand Avenue, Suite 3  
Oakland, CA 94610

Flower Therapy Medical Marijuana Club, et al.

Helen Shapiro  
Carl Shapiro  
404 San Anselmo Avenue  
San Anselmo, CA 94960

Ukiah Cannabis Buyer's Club, et al.

Susan B. Jordan  
515 South School Street  
Ukiah, CA 95482

David Nelson  
106 North School Street  
Ukiah, CA 95482

Oakland Cannabis Buyers Cooperative, et al.

Gerald F. Uelmen  
Santa Clara University  
School of Law  
Santa Clara, CA 95053

Robert A. Raich  
A Professional Law Corporation  
1970 Broadway, Suite 1200  
Oakland, CA 94612

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

Executed at San Francisco, California, this 13th day of October, 1998.

Susan Romo  
(typed)

(signature)

**EXHIBIT A**



ORIGINAL

RECEIVED

OCT 12 1998

ANDREW A. STECKLER

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7 ANNETTE P. CARNEGIE (State Bar No. 118624)  
ANDREW A. STECKLER (State Bar No. 163390)  
8 CHRISTINA KIRK-KAZHE (State Bar No. 192158)  
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9 425 Market Street  
San Francisco, California 94105-2482  
10 Telephone: (415) 268-7000

11 Attorneys for Defendants  
OAKLAND CANNABIS BUYERS'  
12 COOPERATIVE and JEFFREY JONES

RECEIVED

SEP 30 1998

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

FILED

OCT 08 1998

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

13  
14 IN THE UNITED STATES DISTRICT COURT  
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16  
17 UNITED STATES OF AMERICA,  
18 Plaintiff,

19 v.

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

No. C 98-0085 CRB  
C 98-0086 CRB  
C 98-0087 CRB  
C 98-0088 CRB  
C 98-0245 CRB

22  
23 DEFENDANTS' [PROPOSED]  
24 PROTECTIVE ORDER

Date: October 5, 1998  
Time: 2:30 p.m.  
Courtroom: 8  
Hon. Charles R. Breyer

25  
26 AND RELATED ACTIONS.  
27  
28

ORDERS

SUBMITTING COUNSEL ARE  
DIRECTED TO SERVE THIS ORDER UPON  
ALL OTHER PARTIES IN THIS ACTION



1 For good cause, the Court hereby orders that a protective order be entered in this action as  
2 follows:

3 1. This Protective Order shall govern all documents, writings and testimony in this action  
4 designated as "COVERED BY PROTECTIVE ORDER" together with all information contained  
5 therein or derived therefrom, and all copies, portions, excerpts, abstracts or summaries thereof  
6 (hereinafter collectively referred to as "Information") arising from individual patient medical care  
7 (including but not limited to patients' physician's names or other identifying information;  
8 information concerning physician referrals to dispensaries and/or their authorizing or assenting to  
9 ~~cannabis treatment~~; patient medical records or charts; physician status reports; notes made by  
10 physicians, nurses, physician assistants or other medical staff, letters or reports from physicians,  
11 nurses, physician assistants or other medical staff, reports of physical exams; and reports of medical  
12 tests).

communications, recommendations or approvals  
regarding medical cannabis

13 2. Information "COVERED BY PROTECTIVE ORDER" shall be used solely for  
14 conduct of this litigation, and not for any other purpose. Information "COVERED BY  
15 PROTECTIVE ORDER" shall not be disclosed to anyone except as provided in this Protective Order.  
16 In particular, Information "COVERED BY PROTECTIVE ORDER" shall not be disclosed to any  
17 employee or agent of the Drug Enforcement Administration, the Federal Bureau of Investigation, or  
18 any federal, state or local law enforcement agency unless specifically provided for in this Protective  
19 Order.

20 3. Notwithstanding paragraph 2, Information "COVERED BY PROTECTIVE ORDER"  
21 may be disclosed to the following persons who are participating in the conduct of this action on  
22 behalf of the plaintiff after they have signed and sent to defendants' counsel the form attached hereto  
23 stating their agreement to be bound and abide by the provisions of this Protective Order:

24 United States Department of Justice

- 25 Frank W. Hunger, Assistant Attorney General  
26 Robert S. Mueller III, United States Attorney  
27 David J. Anderson  
28 Arthur R. Goldberg  
Mark T. Quinlivan

1            Defendants' Counsel

2            James J. Brosnahan  
3            Annette P. Carnegie  
4            Andrew A. Steckler  
5            Christina Kirk-Kazhe  
6            Robert A. Raich  
7            Gerald F. Uelmen

8 Information "COVERED BY PROTECTIVE ORDER" may also be disclosed, to the extent  
9 reasonably necessary in conducting this litigation, to the secretaries, paralegal assistants, and legal  
10 assistants of the above-named persons after they have signed and sent to defendants' counsel the form  
11 attached hereto stating their agreement to be bound and abide by the provisions of this Protective  
12 Order; and to Court officials involved in this litigation (including court reporters, persons operating  
13 video recording equipment at depositions, and any special master appointed by the Court). Provided  
14 that the individual to whom disclosure is made has signed and sent to defendants' counsel the form  
15 attached hereto stating his or her agreement to be bound and abide by the provisions of the Protective  
16 Order, such Information may also be disclosed to persons noticed for depositions or designated as  
17 trial or deposition witnesses to the extent reasonably necessary in preparing to testify; to such other  
18 persons agreed to by defendants' counsel in writing in advance of disclosure (such agreement shall  
19 not be unreasonably withheld); and to such other persons designated by the Court in the interest of  
20 justice.

21            4.        The inadvertent or unintentional disclosure to plaintiff or their counsel by defendants  
22 or their counsel of Information "COVERED BY PROTECTIVE ORDER," regardless of whether the  
23 Information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in  
24 part of defendants' claim that such Information is covered by this Protective Order. In the event of  
25 inadvertent or unintentional disclosure of Information "COVERED BY PROTECTIVE ORDER,"  
26 defendants shall give prompt notification to plaintiff after learning of an inadvertent or unintentional  
27 disclosure, and shall provide plaintiff with new copies of the inadvertently or unintentionally  
28 produced documents, re-marked as "COVERED BY PROTECTIVE ORDER." The documents  
inadvertently or unintentionally produced without such designation shall then be returned promptly to  
defendants.

1           5.       The Declaration of Michael M. Alcalay, M.D., M.P.H., along with the Exhibit A  
2 attached thereto, filed September 14, 1998, is hereby deemed by the Court to be an inadvertent or  
3 unintentional disclosure of Information "COVERED BY PROTECTIVE ORDER," as described in  
4 paragraph 4. As such, this Information shall be returned promptly to the defendants. Plaintiff is  
5 hereby ordered to return to defendants the Declaration of Michael M. Alcalay, M.D., M.P.H. along  
6 with the Exhibit A attached thereto, and it is ordered to return to defendants all copies made of this  
7 same Information. Plaintiff is hereby further ordered to prepare and provide to the Court within  
8 seven days a log of all copies made of this same Information, and to prepare and maintain a log of all  
9 copies that may be made of this same Information in the future. This same Information shall be  
10 deemed "COVERED BY PROTECTIVE ORDER" from and including September 14, 1998, and into  
11 the future. The Court will receive, and orders served on plaintiff and all parties, the Amended  
12 Declaration of Michael M. Alcalay, M.D., M.P.H., dated September 30, 1998.

13  
14           IT IS SO ORDERED.

15  
16 Dated: 10-8-98

  
\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

APPENDIX TO PROTECTIVE ORDER

AGREEMENT TO ABIDE BY TERMS OF PROTECTIVE ORDER

I have received and read a copy of the foregoing Protective Order. I hereby agree to be bound and abide by the terms of the Protective Order and will not disclose any Information designated as "COVERED BY PROTECTIVE ORDER" as defined in the Protective Order entered into between the parties to any other person, except under the terms specified in the Protective Order.

Dated:

---