UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CARL OLSEN,	)	
Plaintiff,	)	
v.	)	No. 4:08-cv-00370
	)	
MICHAEL MUKASEY, et al.,	)	
Defendants.	)	

PLAINTIFF'S MOTION FOR JUDICIAL NOTICE
PURSUANT TO FEDERAL RULE OF EVIDENCE 201

On Monday, January 5, 2009, the Plaintiff received a letter dated December 19, 2008, from the U.S. Department of Justice, Drug Enforcement Administration ("DEA"), one of the Defendants in this case (attached as Exhibit #1). The letter is signed by named Defendant Michele M. Leonhart, Deputy Administrator.

The letter finds that the evidence of 13 states accepting the medical use of marijuana is not sufficient to justify the initiation of administrative proceedings for the removal of marijuana from schedule I of the CSA.

When Congress enacted the Controlled Substances Act ("CSA"), 21 U.S.C. §§ 801 et seq., Congress did not intend that the DEA would hold administrative hearings when a substance in schedule I no longer meets the statutory requirements for inclusion in schedule I. The only process Congress provided for the DEA in such a situation is the removal of the substance from schedule I of the CSA pursuant to 21 U.S.C. 812(a) ("The schedules established by this section shall be updated and republished . . . on an annual basis . . .). This process occurs with the annual updating

and republication of the schedules in the Code of Federal Regulations, particularly 21 C.F.R. 1308.11(d)(22) ("marijuana").

The attached letter from the DEA confirms that there is no administrative action required other than updating and republishing the schedules in the Code of Federal Regulations. The authority for removing marijuana from schedule I is statutory and does not require agency interpretation. ***United States v. Oakland Cannabis Buyers' Cooperative***, 532 U.S. 483, 492 (2001) ("Under the statute, the Attorney General could not put marijuana into schedule I if marijuana had any accepted medical use"). ***Oregon v. Gonzales***, 368 F.2d 1118, 1124 (9th Cir. 2004) ("The Supreme Court has made the constitutional principle clear: 'Obviously, direct control of medical practice in the states is beyond the power of the federal government.' *Linder v. United States*, 268 U.S. 5, 18, 69 L. Ed. 819, 45 S. Ct. 446 (1925)"). ***Gonzales v. Oregon***, 456 U.S. 243, 258 (2006) ("The Attorney General . . . is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law").

The attached document proves: (1) There is no administrative remedy to exhaust regarding this complaint; (2) The Defendants have made a final administrative ruling regarding this complaint and claim to have no jurisdiction over it; (3) The issues in this case are completely statutory and properly before the U.S. District Court to interpret the statute and enjoin the Defendants from their unlawful interpretation of the statute.

Respectfully submitted this 6th day of January, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 6th, 2009 I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

CHRISTOPHER D. HAGEN, Assistant U.S. Attorney

TAMARA ULRICH, U.S. Department of Justice, Civil Division

Filed Electronically

/s/ Carl Olsen

CARL OLSEN