#1

Alexander, Jacquelyne

From: Hans Brand <Hans@bandhflowers.com>
Sent: Monday, February 13, 2017 12:04 PM
To: sbcob
Cc: Hans Brand
Subject: Public Comment D-1
Attachments: scan.pdf

Comments for upcoming 2/14/17 Board of Supervisors meeting

Regards,

Hans Brand
President, B and H Flowers, Inc.

B AND H
FLOWERS.COM
"Sustainably Grown . . . for a Beautiful World"

February 13, 2017

Chair Hartmann and Honorable Board of Supervisors,

Thank you for your attention to the issue of local cannabis regulations in Santa Barbara County. This is a critical opportunity for your Board to foster local economic development, increase high-paying, stable jobs and develop reasonable guidelines to protect public health and safety.

The cannabis industry is ready and eager to comply with State and local regulations, pay fees and taxes, and positively contribute to the local community. Please take immediate action to provide clarity and certainty for this sector, including a path to compliance with a short-term registry. A local registry is urgently needed to eliminate the black market and recognize legitimate, compliant businesses.

As for the longer-term development of a permanent ordinance, rather than taking action on February 14th that could limit the scope of allowable business types, we recommend that you appoint an Ad Hoc Committee to carefully study all cannabis business types and return in the fall.

There are ample opportunities for the County to carefully permit the full cannabis supply chain in a way that is compatible with the character of our community. We suggest requiring the best available technology, best practices and conditions to mitigate impacts to natural resources and public health and safety. Some examples are as follows:

Renewable energy production onsite;
Seed-to-sale tracking software;
High-end climate control systems;
Perimeter odor-control; and
100% storm water capture and recycling.

Other options to eliminate potential land use conflicts include:

Prohibition of outdoor cultivation in residential zones;
Robust security systems and operational plans, including video surveillance; and preference for use of existing greenhouse infrastructure, to avoid proliferation of new agriculture structures.

Due to the profit margin of this commodity, the cannabis industry is also uniquely positioned to provide high paying jobs, excellent benefit packages, and reliable, long term employment.

B AND H
FLOWERS.COM
"Sustainably Grown . . . for a Beautiful World"

Furthermore, pursuant to MCRSA and AUMA, employers with 20 or more employees must enter into, and comply with, the terms of a labor peace agreement.

We look forward to partnering with Santa Barbara County to develop a regulatory framework and stand ready to assist in this process.

Sincerely,

Hans Brand
President/CEO
B and H Flowers, Inc

#1

Alexander, Jacquelyne

From: Graham Farrar <graham@elitegardenwholesale.com>
Sent: Monday, February 13, 2017 1:23 PM
To: sbcob
Subject: Public Comment D-1
Attachments: BOS Letter - signed GSF.pdf

Dear Clerk of the Board,

Please find attached my comments for the BOS meeting on tomorrow.

If you have any questions or need to contact me my mobile is 805-252-5755

Graham

#1

February 13, 2017

Chair Hartmann and Honorable Board of Supervisors,

Thank you in advance for your consideration of local cannabis regulations – an issue that is critically important for our local economy and public health and safety.

I urge your board to immediately establish a short-term registry to recognize medical businesses, until the County can develop a permanent ordinance. Although your Board voted in January 2016 to grandfather existing cultivators, a permit pathway was never established or required. Therefore, currently the County has no data or inventory on existing cannabis operations. Santa Cruz and San Luis Obispo have implemented temporary registry programs until a permanent ordinance is adopted. These programs have been invaluable for staff and decision makers to understand the scope of local cannabis businesses, as well as collect revenue in fees.

A short-term registration program is critically needed to provide the business community with certainty. Operators who have a culture of compliance are eager to register with the County and pay a fee to help cover the County's costs. If this current regulatory uncertainty continues to exist, responsible business owners will leave Santa Barbara County and establish operations in other jurisdictions with clear guidelines, leaving behind the black market and a missed opportunity to generate revenue. Businesses are making decisions about where to make investments now.

We also implore your Board direct staff to return with a permanent cannabis ordinance, fee structure, and/or tax ordinance no later than October 2017 for adoption prior to January 2018, when the State will start accepting licenses. For local businesses to apply for State licenses in January 2018, applicants must have certification from local jurisdictions recognizing that their operation is in compliance with local and state regulations. It is critical that we provide local, compliant businesses with this certification from the County so they have an opportunity to apply for State licenses and participate in the market.

The cannabis industry is positioned to add real value to the Santa Barbara community. Due to the profit margin, responsible cannabis businesses can provide employees with higher wages and benefit packages, compared to other agriculture operations. Furthermore, greenhouse cannabis cultivators in particular have an opportunity to provide employees year-round employment, as opposed to seasonal work.

Your Board has a unique opportunity to develop regulations for an emerging industry, generate urgently needed revenue for the County, spur economic and workforce development, and protect public health and safety. We are supportive of balanced regulations for the full scope

cannabis businesses - cultivation, nurseries, processing, distribution, testing labs and retail - in appropriate zones. However, these are complex considerations and we ask your board to delegate full and careful exploration of these issues to an Ad Hoc Committee.

Thank you for your attention to this issue and we look forward to collaborating with County staff and your Board to design balanced regulations.

Sincerely,

Graham Farrar
805-252-5755

#1

Alexander, Jacquelyne

From: Graham Farrar <graham@elitegardenwholesale.com>
Sent: Monday, February 13, 2017 1:45 PM
To: sbcob
Subject: Public Comment D-1
Attachments: CanRegSupervisorLetter.pdf

Dear Clerk,

Please see attached comments from Ash Day - Carp resident and business owner

February 12, 2017

Chair Hartmann and Honorable Supervisors,

Thank you for making the issue of cannabis regulations a top priority for the County. We have two suggestions for your consideration on February 14th:

1) **Please take action to remove barriers to compliance for operators who are in compliance with state law by establishing a temporary registry program.** We suggest establishing a short-term registry program is the best way to immediately recognize responsible applicants, since development of a permanent ordinance will take many months. Allowing the black market to continue in the interim is unfair to compliant operators who are willing to register with the County and pay fees now. Creating a temporary registry program is an immediate action that can be taken to begin to eliminate the black market.

   Establishing a registry program will also help the County begin to develop a baseline inventory of local cannabis businesses. The County's lack of data is problematic for public health and safety and poises challenges for many County departments, including Sheriff, Agricultural Commissioner, and Planning and Development. An inventory will help County staff differentiate between good and bad actors and more efficiently deploy enforcement staff resources. The information collected by this program will enable the Board of Supervisors and staff make informed decisions and develop thoughtful, permanent regulations.

The State will not issue licenses in January 2018 for commercial cannabis activities without written authorization from the County so we implore your board to expedite this certification with a registry program.

2) **Direct staff to work with an Ad Hoc Committee and return with a permanent ordinance no later than October 2017.** We are hopeful for an opportunity to participate in the regulatory develop process this year and assist the County with decisions regarding where and how to permit cannabis activities. Please consider permitting all business types including cultivation, nurseries, processing, transportation, distribution, testing labs and retail. Requiring use permits will afford the County with case-by-case analysis of each application and maintain discretion over where and how a permit may be approved. Zoning districts where cannabis operations may be permitted should be based on similar uses allowed in the zoning code.

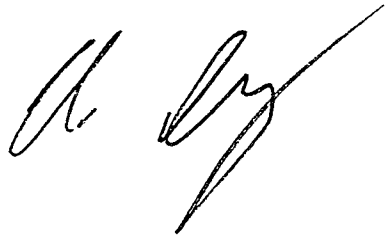
Although we strongly suggest that you task an Ad Hoc Committee with detailed policy discussions at a later date, one approach which may be worth considering is prioritization of existing greenhouse infrastructure for cannabis cultivation. It is easier to manage security, odor, aesthetics and environmental impacts within a building or structure, compared to outdoor grows. For example, requiring indoor cultivation could decrease opportunities for water diversion, grading, erosion, tree removal and other environmental impacts. Another possible approach to avoid neighborhood safety issues could include a prohibition of commercial outdoor cultivation in residential zones.

Lastly we urge your board to study the issue of taxation with caution. Although we support efforts to recover county costs, and acknowledge the need to generate revenue, over taxation of this industry will drive responsible businesses out of Santa

Barbara and into other jurisdictions with more reasonable taxation rates, leaving behind the black market.

Thank you for your consideration and we look forward to working closely with the County over the coming months,

Ash



Green House Processing
and Supply
4158675053

Alexander, Jacquelyne

#1

From: Max Salcedo <maxsalcedo24@gmail.com>
Sent: Monday, February 13, 2017 2:37 PM
To: sbcob
Subject: Feb 14 Hearing for Marijuana

Please don't ban medical marijuana sites or collectives in Santa Barbara or impose more taxes.

I've been working as a delivery driver in the industry for over 4 years, and know first hand the pain that people in this town suffer from and need medicinal marijuana.

Marijuana is already extremely expensive, and the people that need it the most have the hardest time paying for it... especially because it's not covered by insurance which it should be. The need for providing relief to these people is essential and what makes America, and especially California progressive which is what makes me proud to live here.

People also feed families and depends on Medicinal Marijuana to provide stable living conditions for children. Budgets are balanced, rent is payed and bank loans are minimized because of Marijuana.

This issue is important and increasing taxes or imposing more regulations on it is going to effect many people in ways in which they don't deserve.

hank you

Max Salcedo

#1

Alexander, Jacquelyne

From: Tiana <tianablanco@msn.com>
Sent: Monday, February 13, 2017 1:08 PM
To: sbcob
Subject: Marijuana Cultivation in Santa Barbara

Hello,

My name is Tiana and I am a medical marijuana patient and have been going to Maria Ygnacio Farm Collective for many years. It is the only affordable medical marijuana collective in town or even hrs away that is here for me as a patient. Please do not prohibit them from cultivation and being a model collective as they really care for us medical marijuana patients. As far as taxes, I know there's more already coming after 2018 and to put more of the burden on us patients who already don't have much money is cruel. This is a complicated situation I'm sure, but please don't make medical patients in Santa Barbara county suffer the consequences.

Thank you so much for everything you do.

Alexander, Jacquelyne

From:	Cody Hemmah <rogue promo@gmail.com>
Sent:	Monday, February 13, 2017 10:45 AM
To:	sbcob
Subject:	Feb 14 hearing for marijuana

Hello, im Cody Hemmah.

Thank you for being open and receptive of medical marijuana in Santa Barbara county. I'm representing Maria Ygnacio Farm Collective also known as MY Farm Collective, a known medical marijuana collective with over a 1000 active members participating in our organic growing in the county of Santa Barbara.

This is my third time speaking as an advocate for medical marijuana for this county.

First off:
In 1996 Prop 215 was voted into law by Californians, affordable safe access to CA patients shouldn't be in question here. Members rely on us growing when they can't, growing sustainable organic high quality affordable medical marijuana. Under state laws including prop 215 our collective is allowed to grow medical marijuana for our members.

I understand the financial and political challenges of regulation and enforcing, but Taxing medical marijuana in the county shouldn't happen for many reasons as it effects patients directly.

-Prop 215 voted into law by Californians, states medical marijuana needs to be affordable. Our members thank us all the time for being affordable. After 2018 with prop 64 there's an automatic 15% excise tax, growers fee of 9.25/ oz and 2.75/oz of trim. What's does that mean for Medical patients? Numbers. On average our ounces are around $160. When new taxes are implemented, our ounces will rise to $196 just with the new taxes. Let's add on the new tracking regulations, licensing fees, environmental compliance and boom, NOT AFFORDABLE! Prop 215 must still be followed as it is still in affect, it is law!

So many sick members come who are struggling financially. More taxes will make it impossible for many members to get the quantity they require. That is a fact! This is suppose to be compassion! I feel stressed thinking I potentially cannot be there helping members.

After last years hearing, which the voices of medical marijuana patients were heard, collectives following county and state regulations can continue.

Since 2009 My Farm Collective has been a part Santa Barbara County without incident from authorities or neighbors doing everything we possibly could to be in compliance. Late last year our paperwork was reviewed, our site inspected by two zoning enforcers, head of narcotics, fire marshals, and two county officials saying we were unique and in compliance. As a medical marijuana collective we had no compliance issues, falling into place of a legal non conforming operation under prop 215, state law, and Sb county regulations.

I would also like to point out we were recognized in 2011 as a non storefront collective by the county, complying even then with ordinances making us unique, as well as a known member of this community. Please keep all this in mind when thinking about excluding any type of state license that may effect our collective and members. We are relied on by our members and want to continue working with the county, and our wonderful mmj community. Thank you so much for your time. Please any questions we are more than happy to answer.

-Cody Hemmah
805-886-4528

#1

Lenzi, Chelsea

From:	TERRY HAMMONS <ts.hammons@verizon.net>
Sent:	Friday, February 10, 2017 2:26 PM
To:	Fischer, Gina
Cc:	sbcob
Subject:	Proposition 64 Problems
Attachments:	Federal Penalties for Marijuana.pdf; ATT00001.htm; Fourth Corner Credit Union vs Federal Reserve Bank of Kansas City.pdf; ATT00002.htm; Cole Memorandum; ATT00003.htm

On the Board of Supervisors' agenda is item 17-00136, HEARING - Consider recommendations regarding marijuana regulations and the impacts of Proposition 64.

In that hearing, I would like to direct the Supervisors to the conflict of Proposition 64 and federal law.

Marijuana is a Schedule 1 Substance. This is federal law pertaining to Schedule 1 Substances:

https://www.deadiversion.usdoj.gov/21cfr/21usc/841.htm

The federal penalties for cultivation of and possession of marijuana are:

Federal Trafficking Penalties for Marijuana, Hashish and Hashish Oil, Schedule I Substances	
Marijuana 1,000 kilograms or more marijuana mixture or 1,000 or more marijuana plants	**First Offense:** Not less than 10 yrs. or more than life. If death or serious bodily injury, not less than 20 yrs., or more than life. Fine not more than $10 million if an individual, $50 million if other than an individual. **Second Offense:** Not less than 20 yrs. or more than life. If death or serious bodily injury, life imprisonment. Fine not more than $20 million if an individual, $75 million if other than an individual.
Marijuana 100 to 999 kilograms marijuana mixture or 100 to 999 marijuana plants	**First Offense:** Not less than 5 yrs. or more than 40 yrs. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine not more than $5 million if an individual, $25 million if other than an individual. **Second Offense:** Not less than 10 yrs. or more than life. If death or serious bodily injury, life imprisonment. Fine not more than $8 million if an individual, $50million if other than an individual.
Marijuana 50 to 99 kilograms marijuana mixture, 50 to 99 marijuana plants Hashish More than 10 kilograms Hashish Oil More than 1 kilogram	**First Offense:** Not more than 20 yrs. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine $1 million if an individual, $5 million if other than an individual. **Second Offense:** Not more than 30 yrs. If death or serious bodily injury, life imprisonment. Fine $2 million if an individual, $10 million if other than an individual.
Marijuana less than 50 kilograms marijuana (but does not include 50 or more marijuana plants regardless of weight) 1 to 49 marijuana plants Hashish 10 kilograms or less Hashish Oil 1 kilogram or less	**First Offense:** Not more than 5 yrs. Fine not more than $250,000, $1 million if other than an individual. **Second Offense:** Not more than 10 yrs. Fine $500,000 if an individual, $2 million if other than individual.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge R. Brooke Jackson

Civil Action No 15-cv-01633-RBJ

THE FOURTH CORNER CREDIT UNION, a Colorado state-chartered credit union,

Plaintiff,

v.

FEDERAL RESERVE BANK OF KANSAS CITY,

Defendant.

ORDER

The Fourth Corner Credit Union seeks a mandatory injunction directing the Federal Reserve Bank of Kansas City to grant it a "master account." The bank in turn asks the Court to dismiss the case. The dispute arises from the current clash of state and federal law concerning the legality of marijuana. For the reasons discussed in this Order, this Court is unable to grant plaintiff the relief it seeks.

BACKGROUND

In 2012 the people of the State of Colorado voted to amend the state's constitution to legalize recreational use of marijuana. Declaring it to be in the "interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom," the Colorado Constitution authorizes personal use of marijuana by persons 21 years of age or older. Art. XVIII, § 16(1). The amendment also authorizes the operation of marijuana-related facilities.

Id. at (4). Personal possession and marijuana-related facilities are subject to regulation by the Department of Revenue. *Id.* at (5).

Unsurprisingly, a substantial industry has arisen around the cultivation, processing, transportation, and sale of marijuana. Like other industries, these "marijuana-related businesses," often simply called "MRBs," have a need for banking services. However, despite legalization in Colorado and several other states, the cultivation and distribution of marijuana remains illegal under the Controlled Substances Act. 21 U.S.C. § 801 et seq. *See Gonzales v. Raich,* 545 U.S. 1, 13-14 (2005).[1] For that reason, perhaps among others, banking institutions have been reluctant to serve MRBs. Bills that would modify the federal prohibition have been proposed but not yet enacted.

In January 2014 several members of Colorado's congressional delegation sent a letter to Deputy Attorney General James Cole of the United States Department of Justice and to the Director of the Financial Crimes Enforcement Network ("FinCEN") of the United States Department of the Treasury, asking that they "expedite guidance that would enable licensed marijuana dispensaries and retail stores in Colorado to avail themselves of the banking system." Amended Complaint, ECF No. 24, at ¶27. The letter reported (and common sense confirms) that operation of MRBs on a cash-only basis created significant public safety concerns for customers and employees, while making regulation, auditing and tax collection more difficult. *Id.*

[1] Marijuana is a Schedule I controlled substance. 21 U.S.C. § 812(c). The possession, manufacture, distribution, or dispensing of marijuana (except in a manner authorized by the Controlled Substances Act) is illegal. 21 U.S.C. §§ 841 (a)(1), 844(a). Aiding and abetting the manufacture, distribution, and dispensing of marijuana is also illegal. 18 U.S.C. § 2. Likewise, transporting or transmitting funds known to have been derived from the distribution of marijuana is illegal. 18 U.S.C. § 1960.

Deputy Attorney General Cole responded with a memorandum dated February 14, 2014 that reiterated the Department of Justice's commitment, first expressed in an August 29, 2013 guidance document, to "enforcing the CSA consistent with Congress' determination that marijuana is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels." ECF No. 31-1 at 1. The Cole memorandum also noted that financial institutions that conduct transactions with money generated by marijuana-related conduct could face criminal liability under money laundering statutes and the Bank Secrecy Act. *Id.* at 2. The memorandum stated that United States attorneys should apply the same eight priorities identified in the earlier guidance document in determining whether to charge individuals or institutions with marijuana-related violations of federal law. *Id.* However, it repeated that the memorandum "does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law." *Id.* at 3.

On the same date FinCEN issued a document entitled, "BSA Expectations Regarding Marijuana-Related Businesses," FIN-2014-G001, frequently referred to as the "FinCEN guidance." ECF No. 34-3. This document acknowledges that the Controlled Substances Act "makes it illegal under federal law to manufacture, distribute, or dispense marijuana," and it advises banking institutions, as part of their customer due diligence, to consider whether an MRB implicates one of the Cole memorandum priorities. *Id.* at 1, 3. Purporting to clarify how financial institutions can provide services to MRBs consistent with their Bank Secrecy Act obligations, it reminds such institutions that, "[b]ecause federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity," they must file a "suspicious activity report" on

activity involving an MRB. However, a more limited report may be filed if the institution reasonably believes that the business does not implicate one of the Cole memorandum priorities or violate state law. *Id.* at 3-4.

Some banking institutions have apparently elected to serve MRBs and to take their chances under federal law. However, that has by no means been a universal reaction to the Cole memorandum and the FinCEN guidance. The Amended Complaint attaches and quotes a press release from the Colorado Bankers Association which interprets those documents as inviting banks to serve MRBs "at your own risk" while emphasizing all of the risks. ECF No. 24 at ¶32. Indeed, the Association's President is quoted as stating that "[t]he only real solution is an act of Congress." Press Release at 2.

Nevertheless, in plaintiff's words, "ten courageous citizens" came together in March 2014 to "organize a Colorado state-chartered credit union to develop a robust anti-money laundering . . . program to comply with the newly issued FinCEN guidance and Cole memorandum and thereby provide much needed banking services to compliant, licensed cannabis and hemp businesses and to thousands of persons, businesses and organizations that supported the legalization of marijuana." ECF No. 24 at ¶35. On November 19, 2014 the Colorado Division of Financial Services granted The Fourth Corner Credit Union a state credit union charter pursuant to C.R.S. § 11-30-117.5(3). *Id.* at ¶52.

The newly minted credit union promptly applied to open a "master account" at the Federal Reserve Bank of Kansas City. Despite its name, the Bank is not a federal agency. Rather, it is a private corporation created by an Act of Congress and run by its own board of directors. Affidavit of Susan Zubradt, the Bank's Vice President of Supervision and Risk

Management, ECF No. 34-1, at ¶3. Depository institutions can only access the Federal Reserve payments system through a master account or through a correspondent bank that has a master account. ECF No. 24 at ¶53. This access is necessary for the electronic transfer of funds. Simply put, without this access The Fourth Corner Credit Union is out of business.

On July 16, 2015 the Bank denied the Credit Union's application for a master account, and this suit followed. Plaintiff's position can be simply stated: it is entitled to open a master account pursuant to the Banking Act of 1935, as amended by § 107 of the Monetary Control Act of 1980, 12 U.S.C. § 248a(c)(2). Applications are normally granted as a matter of course within a few days. Plaintiff believes that the Bank was motivated by a desire to exclude it as a competitor for the marijuana industry's banking business. Plaintiff moves for summary judgment on the statutory interpretation issue. ECF No. 26.

In response and in its motion to dismiss the Bank makes three arguments. ECF Nos. 31, 34. First, it submits that Colorado's actions taken to facilitate the distribution of marijuana are preempted by federal law. Second, it argues that this Court should not use its equitable powers to facilitate criminal activity. Finally, it contends that the Credit Union misinterprets § 248a which only concerns the pricing of services provided by the Bank, not the Bank's obligation to provide a master account. The dueling motions have been fully briefed. The Court held oral argument on December 28, 2015. The parties agree that there are no genuine issues of material fact in dispute, and that the issues can be decided as matters of law.

CONCLUSIONS

I need not reach or decide the preemption issue.[2] The problem here is that the Credit Union is asking the Court to exercise its equitable authority to issue a mandatory injunction. But courts cannot use equitable powers to issue an order that would facilitate criminal activity. *See, e.g., Cartlidge v. Rainey*, 168 F.2d 841, 845 (5th Cir. 1948) ("It is well settled that equity will not lend its aid to the perpetration of criminal acts."). *Cf. Combs v. Snyder*, 101 F. Supp. 531, 532 (D.D.C 1951) *aff'd*, 342 U.S. 939 (1952) ("The complaint clearly implies, and plaintiff's counsel conceded in oral argument, that what plaintiff seeks is the intervention of the court for the protection of a criminal business. Nothing is better settled than that it is within the discretion of a court of equity to deny its aid to one who does not come into court with clean hands.").

A similar issue was addressed by the Tenth Circuit Bankruptcy Appellate Court: "We agree with the bankruptcy court that while the debtors have not engaged in intrinsically evil conduct, the debtors cannot obtain bankruptcy relief because their marijuana business activities are federal crimes." *In re Arenas*, 535 B.R. 845, 849-50 (10th Cir. BAP 2015). The *Arenas* court added, "In this case, the debtors are unfortunately caught between pursuing a business that the people of Colorado have declared to be legal and beneficial, but which the laws of the United States—laws that every United States Judge swears to uphold–proscribe and subject to criminal sanction." *Id.* at 854.

[2] It is clear, however, that Congress has the power to prohibit cultivation, distribution and use of marijuana notwithstanding compliance with state law. *Gonzales,* 545 U.S. at 29.

Plaintiff attempts to give me comfort that, notwithstanding the oath I took to uphold the laws of the United States, I can grant the relief it seeks. First, plaintiff points out that the Monetary Control Act of 1980, itself a federal statute, states,

> *All Federal Reserve bank services covered by the fee schedule shall be available to nonmember depository institutions* and such services shall be priced at the same fee schedule applicable to member banks, except that nonmembers shall be subject to any other terms, including a requirement of balances sufficient for clearing purposes, that the Board may determine are applicable to member banks.

12 U.S.C. § 248a(c)(2) (emphasis added). I agree with the plaintiff that the italicized language is not limited to pricing. Cases referencing § 248a appear to agree. *See, e.g., Jet Courier Services, Inc. v. Federal Reserve Bank of Atlanta,* 713 F.2d 1221, 1222 (6th Cir. 1983) ("services such as check clearing formerly provided to member banks only will be made available to all banks, regardless of whether or not they are members"); *Total Aviation Services, Inc. v. United Jersey Bank,* 626 F. Supp. 1087, 1090 (E.D.N.Y. 1987) (fees generated by Federal Reserve Bank of Kansas City's check-processing activities in New York did not create personal jurisdiction because they did no more than compensate for a statutorily mandated act under 12 U.S.C. § 248a). However, it is at least implicit that this statute does not mandate the opening of a master account that will facilitate activities that violate federal law.[3]

Recognizing that problem, plaintiff amended its complaint to specify that it intends to provide banking services "in strict accordance with state and federal laws, regulations and guidance." ECF No. 24 at ¶2. Thus, "if service of MRBs is authorized by state and federal law,"

---

[3] In its effort to persuade the Court to apply § 248a(c)(2), plaintiff argues that a court sitting in equity cannot ignore a statute enacted by Congress. ECF No. 26 at 7 n.23. But that is the point – this Court may not ignore Congress's present judgment that distribution of marijuana, and aiding and abetting such distribution, is illegal.

plaintiff will "charge credit union members that required enhanced monitoring service fees commensurate with the cost of the enhanced due diligence required by the FinCEN guidance and Cole memorandum." *Id.* at ¶37. But therein lies the rub. Plaintiff contends that the FinCEN guidance and Cole memorandum already provide federal authorization to financial institutions to serve MRBs.[4] Therefore, offering to serve MRBs only if authorized by federal law is something of a sleight of hand. The problem is, the FinCEN guidance and Cole memorandum do nothing of the sort. On the contrary, the Cole memorandum emphatically reiterates that the manufacture and distribution of marijuana violates the Controlled Substances Act, and that the Department of Justice is committed to enforcement of that Act. It directs federal prosecutors to apply certain priorities in making enforcement decisions, but it does not change the law.[5] The FinCEN guidance acknowledges that financial transactions involving MRBs generally involve funds derived from illegal activity, and that banks must report such transactions as "suspicious activity." It then, hypocritically in my view, simplifies the reporting requirements.

In short, these guidance documents simply suggest that prosecutors and bank regulators might "look the other way" if financial institutions don't mind violating the law. A federal court

---

[4] For example, in its summary judgment motion, plaintiff states, "Presently [the FinCEN guidance] authorizes all depository institutions to serve MRBs." ECF No. 26 at 3. It reaffirms this position in its response to defendant's motion to dismiss. ECF No. 35 at 3.

[5] *See also Feinberg v. C.I.R.*, No. 15-1333, 2015 WL 9244893, at *2 (10th Cir. Dec. 18, 2015) ("[I]t's true . . . that two consecutive Deputy Attorneys General have issued memoranda encouraging federal prosecutors to decline prosecutions of state-regulated marijuana dispensaries in most circumstances. But in our constitutional order it's Congress that passes the laws, Congress that saw fit to enact 21 U.S.C. § 841, and Congress that in § 841 made the distribution of marijuana a federal crime.").

cannot look the other way. I regard the situation as untenable and hope that it will soon be addressed and resolved by Congress.[6]

ORDER

Plaintiff's motion for summary judgment, ECF No. 26, is denied. Defendant's motion to dismiss, ECF No. 31, is granted. This civil action is dismissed with prejudice. As the prevailing party the defendant is awarded its reasonable costs pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

DATED this 5th day of January, 2016.

BY THE COURT:

R. Brooke Jackson
United States District Judge

[6] Plaintiff anticipates that MRBs will constitute a numerical minority of the credit union's membership, and that the majority of the members will be persons and institutions who support legal marijuana. Perhaps so, but service of MRBs is a core purpose of the institution and is the basis for the concerns about public safety, regulation and taxation. The parties could agree that plaintiff would not accept MRB members unless and until the Congress expressly amends the law and possibly resolve their impasse. But they have been unwilling to do so to date, and a resolution on that basis is beyond the issue presented to this Court.

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.[1]

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

---

[1] These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

Begin forwarded message:

From: TERRY HAMMONS <ts.hammons@verizon.net>
Subject: Proposition 64 Problems
Date: February 10, 2017 at 2:25:44 PM PST
To: gfischer@countyofsb.org
Cc: sbcob@co.santa-barbara.ca.us

On the Board of Supervisors' agenda is item 17-00136, HEARING - Consider recommendations regarding marijuana regulations and the impacts of Proposition 64.

In that hearing, I would like to direct the Supervisors to the conflict of Proposition 64 and federal law.

Marijuana is a Schedule 1 Substance. This is federal law pertaining to Schedule 1 Substances:

https://www.deadiversion.usdoj.gov/21cfr/21usc/841.htm

The federal penalties for cultivation of and possession of marijuana are:

Federal Trafficking Penalties for Marijuana, Hashish and Hashish Oil, Schedule I Substances	
Marijuana 1,000 kilograms or more marijuana mixture or 1,000 or more marijuana plants	**First Offense:** Not less than 10 yrs. or more than life. If death or serious bodily injury, not less than 20 yrs., or more than life. Fine not more than $10 million if an individual, $50 million if other than an individual. **Second Offense:** Not less than 20 yrs. or more than life. If death or serious bodily injury, life imprisonment. Fine not more than $20 million if an individual, $75 million if other than an individual.
Manjuana 100 to 999 kilograms marijuana mixture or 100 to 999 manjuana plants	**First Offense:** Not less than 5 yrs. or more than 40 yrs. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine not more than $5 million if an individual, $25 million if other than an individual. **Second Offense:** Not less than 10 yrs. or more than life. If death or serious bodily injury, life imprisonment. Fine not more than $8 million if an individual, $50million if other than an individual.
Marijuana 50 to 99 kilograms marijuana mixture, 50 to 99 marijuana plants Hashish More than 10 kilograms Hashish Oil More than 1 kilogram	**First Offense:** Not more than 20 yrs. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine $1 million if an individual, $5 million if other than an individual. **Second Offense:** Not more than 30 yrs. If death or serious bodily injury, life imprisonment. Fine $2 million if an individual, $10 million if other than an individual.
Marijuana less than 50 kilograms marijuana (but does not include 50 or more marijuana plants regardless of weight) 1 to 49 marijuana plants Hashish 10 kilograms or less Hashish Oil 1 kilogram or less	**First Offense:** Not more than 5 yrs. Fine not more than $250,000, $1 million if other than an individual. **Second Offense:** Not more than 10 yrs. Fine $500,000 if an individual, $2 million if other than individual.

In that Proposition 64 conflicts with federal law and that not being resolved before being passed in the November 2016

election, this creates complex issues that counties and cities must deal with.

Because banks and many credit unions are prevented, by federal law, of creating accounts with "marijuana related businesses," because of the Bank Secrecy Act, this puts the county in a precarious position of permitting a criminal act, according to federal law, with the selling, cultivation and possession and how the cash proceeds are accounted.

This case is from the Federal District Court of Colorado. It clearly details the legal issues related to money and banking with marijuana:

Fourth Corner Credit Union vs Fe...as City.pdf

It was reported just after Jeffery Sessions was confirmed as the new United States Attorney General, he would be reviewing the "Cole Memorandum" with regard to continuing policy of federal enforcement of marijuana. As of today, there is no new information from the Justice Department as to any policy changes. This puts cities and counties in a tenuous position because of being in conflict with federal criminal law, banking law and the questionable intentions of Proposition 64.

This is the Cole Memorandum with reference to the current (but questionable future) policy by the U.S. Justice Department:

Cole Memorandum

One further note, public health and the safety of those that use and others that won't use depends how services and controls are put in place if the county moves forward with Proposition 64. Please take into consideration this analysis in your decision(s):

https://tobacco.ucsf.edu/sites/tobacco.ucsf.edu/files/u9/Public%20Health%20Analysis%20of%20Marijuana%20Initiatives%201%20Feb%202016.pdf

I hope the Board of Supervisors pays great attention to the complexity of what Proposition 64 has created. Regardless of where marijuana is or will be in the Schedule of Controlled Substances, it will always be and should be considered a drug with controls.

Sincerely,

Terry Hammons