

1 Law Offices of Eric D. Shevin
Eric D. Shevin, Esq. (State Bar No. 160103)
2 Stephen J. Fisch, Esq. (State Bar No. 240774)
Meital Manzuri, Esq. (State Bar No. 258256)
3 15260 Ventura Blvd., Suite 1050
Sherman Oaks, CA 91403
4 Telephone: (818) 784-2700
Facsimile: (818) 784-2411

5 Attorneys for Defendant
6 STEELE SMITH

7
8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA

10
11 THE UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 STEELE SMITH

15 Defendant.

Case No. 07 - 264 - CJC

**NOTICE OF MOTION AND MOTION TO
ALLOW DEFENDANT TO PRESENT A
COMPLETE DEFENSE**

16 TO THE HONORABLE COURT AND THE U.S. ATTORNEY OR HIS REPRESENTATIVE:

17 PLEASE TAKE NOTICE that, STEELE SMITH through counsel of record, ERIC D.
18 SHEVIN will, and hereby does, move to be allowed to present a defense as required under the
19 Procedural Due Process. This motion is made pursuant to the Fifth Amendment.

20 This motion is made on the grounds that STEELE SMITH relied on several officials'
21 interpretations of the law, and acted in accordance with these interpretations. The court must be
22 allowed to hear the full circumstances under which Mr. Smith acted, and thus he must be allowed to
23 present evidence showing he was acting lawfully. Due Process requires Mr. Smith be allowed the
24 opportunity to be heard, which in this case requires a mistake of law defense.

25 Said motion to present a defense is based on this Notice of Motion, the attached
26 Memorandum of Points and Authorities, such supplemental pleadings that may be filed in the course
27 of this motion, the documents and records on file in this action and on any evidence and argument to
28

1 be presented at the hearing on this motion.

2 Respectfully submitted,

3
4
5
6 DATED:

/s/ Eric D. Shevin
Eric D. Shevin: Ca State Bar 160103

7
8 Attorney for
STEELE SMITH

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I.**

4 **PURSUANT TO PROCEDURAL DUE PROCESS UNDER THE FIFTH**
5 **AMENDMENT, MR. SMITH SHOULD BE ALLOWED TO PRESENT A**
6 **DEFENSE.**

7 **A.**

8 **Mr. Smith Should be Allowed to Present a Defense Based on Medical Grounds**
9 **Under Due Process.**

10 Under Procedural Due Process, an individual must be afforded the opportunity to
11 be heard. See e.g., *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004). The opportunity to be
12 heard includes the right to present a defense. *Id.* In this case, an adequate defense
13 necessarily includes Mistake of Law. First, Mr. Smith did not have the requisite Mens
14 Rea to justify a conspiracy conviction. Second, he relied upon a valid law and several
15 officials' interpretation of that law. Finally, a mistake of law defense here is warranted
16 because medical marijuana laws are in conflict, and it is reasonable that Mr. Smith
17 thought he was acting lawfully. Accordingly, Mr. Smith's honest intentions should be
18 allowed as a mistake of law defense with regards to both the conspiracy charge and the
19 charge for cultivation.

20 **B.**

21 **Mistake of Law Negates the Specific Intent of a Conspiracy Charge.**

22 Conspiracy is "specific intent" crime. *U.S. v. Blair*, C.A.10 (Okla.) 1995, 54 F.3d
23 639, certiorari denied 516 U.S. 883. The specific intent required for the crime of
24 conspiracy is the intent to advance or further the unlawful object of the conspiracy.
25 *United States v. Haldeman*, 559 F.2d 31, 112 (D.C. Cir. 1976).
26
27
28

1 The law generally assumes that defendants have the requisite mens rea if they
2 take knowing and voluntary actions, whether or not they knew the conduct was criminal.
3 The primary exception is crimes that require specific intent - that is, knowledge that the
4 action was criminal. See *Peck v. United States*, 73 F.3d 1220, 1227 (2d Cir. 1995). Good
5 faith reliance on an official interpretation of law undermines a charge of specific intent,
6 because the test for specific intent focuses on the actor's subjective state of mind, and
7 thus reliance ordinarily need not even be reasonable. See *United States v. Darby*, 37 F.3d
8 1059, 1065 (4th Cir. 1994)

9
10 "The difference between a specific intent and general intent crime involves the
11 way in which the intent is proved - whether by probing the defendant's subjective state of
12 mind or whether by objectively looking at the defendant's behavior in the totality of the
13 circumstances." *United States v. Deandino*, 958 F.2d 146, 149 (6th Cir. 1992).

14
15 Thus, the prosecution has the burden of proving the subjective intent of Mr. Smith
16 to prevail on a conspiracy count.

17 C.

18 **Due to Mr. Smith's Good Faith Reliance on Valid State Law and Several**
19 **Officials' interpretations of the Law, This Court Should Allow Mr. Smith to**
20 **Present a Mistake of Law Defense.**

21 Due Process prevents the conviction of an individual who reasonably relies on an
22 official's interpretation of the law. See *Cox v. Louisiana*, 379 U.S. 559, 571 (1965). In
23 *Cox*, protesters were arrested after relying on a police officer's assertion that they could,
24 in spite of contrary law, protest near a courthouse. *Id.* There, the Supreme Court ruled
25 that a single police officer's assertion of law was sufficient to justify the Defendant's
26 conduct and allowed him to present a mistake of law defense. *Id.* In the instant case, Mr.
27

1 Smith relied on the Compassionate Use Act, a valid California law, set forth in CA
2 Health and Safety Code 11362.5. Not only did he rely on this law, but also on several
3 different official interpretations of the law to create his collective. First, it is noteworthy
4 that Mr. Smith completed two years of law school at Western School of Law.
5 Accordingly, he has a basic knowledge of how to research the law and gather
6 information. Mr. Smith consulted his attorney, William Paoli of the law firm Teller,
7 Paoli, and Purdy, to be certain his collective was following California Law. They had
8 several consultations about the law and how stay within the guidelines of a collective
9 and/or caregiver.
10

11 To comply with these rules, Mr. Smith set up a legitimate business, California
12 Compassionate Caregivers (“C3”). C3 was registered with a business license in the cities
13 of Anaheim and Garden Grove and those business licenses were posted on the wall of his
14 office. C3 was set up under net 30 proper business terms, and was an established 501
15 non-profit corporation. He had credit lines with Orange County Farm Supply and Orange
16 County Hydroponics. Moreover, he paid his taxes and provided durable medical
17 equipment to his patients, free of charge. For example, there was a storage facility at the
18 Euclid premise that housed 8 wheelchairs, walkers, porta-potties, and wheelchair racks
19 for cars. C3 used special packaging that was permanently sealed and not reusable or
20 transferable, issued patient ID cards, tried to follow pharmacy-labeling requirements, had
21 stationary and business cards, and was operating openly and notoriously. Accordingly,
22 Steele Smith was operating a legitimate business and did not have any intent to break the
23 law.
24
25
26
27
28

1 In full belief that he was conducting a collective lawfully, Mr. Smith allowed the
2 Fullerton Police to document his grow operation thoroughly. The officers came in and
3 filmed, took photos, and interviewed Mr. Smith. Mr. Smith gladly showed them
4 everything he had and the lead officer even complimented him on the cleanliness and
5 legitimacy of the operation. All of these precautions were further confirmed to have been
6 duly taken when the Fullerton Police and Orange County Prosecutors never brought any
7 charges against him.
8

9 After Fullerton Police and Orange County prosecutors chose not to continue any
10 action against Mr. Smith, he proceeded under the impression that his actions were lawful
11 for nine months until federal agents executed a raid. Despite Mr. Smith's conscious
12 adherence to state law and prudent regard for the law, the current charges were instituted
13 against him.
14

15 It is undeniable that Mr. Smith made a bona fide effort to follow the law.
16 Moreover, his belief of such laws' validity is reasonable. This is further evidenced by the
17 Attorney General Guidelines for setting up a lawful collective in California. (Attached as
18 Exhibit A). Accordingly, Due Process and every traditional notion of justice requires Mr.
19 Smith be allowed to present a mistake of law defense.
20

21 **D.**
22 **Under the Reasoning in *Cheek v. United States*, a Mistake of Law Defense**
23 **Should be Allowed Here.**

24 Due to the complex nature of tax laws, the Supreme Court held that a defendant
25 must have the specific intent to violate tax law, and can present a mistake of law defense.
26 See *Cheek v. United States*, 498 U.S. 192. "The proliferation of statutes . . . has made it
27 difficult for the average citizen to know and comprehend the extent of the duties and
28

1 obligations imposed by tax laws.” *Id.* at 199. Similarly, this case involves a dueling
2 dichotomy of regulations and laws relating to marijuana. California state law provides
3 rights and means for valid medical patients to use marijuana compassionately. Federal
4 narcotic statutes treat marijuana the same as other illegal narcotics and mandates
5 mandatory minimum prison sentences in the majority of cases. Due to the confusing and
6 unsettled nature of medical marijuana laws, and Mr. Smith’s reliance on state laws, a
7 mistake of law defense should be allowed.
8

9 **E.**
10 **The Rationale Behind the General Unavailability of a Mistake of Law Defense Does**
11 **Not Apply Here.**

12 The rationale behind the general unavailability of a Mistake of Law Defense is
13 that the law is finite and knowable, and thus ignorance of the law is no excuse. See
14 *Cheek v. United States* at 199. As stated above, the Court in *Cheek* allowed for the
15 mistake of law defense because “the proliferation of statutes and regulations has
16 sometimes made it difficult for the average citizen to know and comprehend [the law] . .
17 .” Similarly, medical marijuana law is not finite, nor knowable. As discussed above,
18 legal scholars themselves are unclear as to which law should supersede the other.
19 (compare decisions in *Raich* and *Kha*). Moreover, it is noteworthy that nowhere within
20 the Attorney General Guidelines are there warnings about the fact that compliance with
21 said guidelines is a direct violation of serious federal drug laws to which one is subject to.
22 In fact, the Attorney General Guidelines clearly state that “no conflict exists . . . not
23 positively conflict with the CSA”. (Attorney General Guidelines p.3) Since medical
24 marijuana law is particularly unknowable, the rationale that ignorance is no excuse, does
25 not apply here. Accordingly, Mr. Smith should be afforded the mistake of law defense.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F.

This Court Should Allow Third Party Witnesses to Testify because the Jury needs to Know Mr. Smith Followed a Valid Law.

In this Court’s order granting in part and denying in part the Government’s motion to suppress, it was ordered that no Third Party Witnesses be allowed to testify about the medicinal benefits of marijuana, nor the legality of the Compassionate Use Act. As this Court quoted “The jury cannot be expected to make its decision in a void – without knowledge of the time, place, and circumstances of the acts which form the basis for the charge.” *See United States v. Daly*, 974 F.2d 1215, 1216 (9th Cir. 1992).

Respectfully, the defense requests the court *reconsider* the fact that a void is created without testimony showing the medicinal effects of marijuana and the valid California Law that supports what defendant presumed to be lawful conduct.

Solely allowing Mr. Smith to testify about his motivations is not enough to fully inform the Jury. Jurors must know the extent of the confusion present here. They must know that there are two valid laws – one state and one federal – that directly contradict. An explanation of the laws and how California’s law was validly passed is thus necessary for the jury to make an informed decision.

Moreover, most jurors will not have any knowledge of the legitimate medical benefits of medical marijuana. This information is absolutely necessary to portray an accurate picture of the case at bar. The distinction between the medical distributions of a drug versus the portrayal of a drug dealer is paramount in the issues involved here.

Accordingly, this Court should allow expert testimony about the medicinal benefits of marijuana and the legality of the Compassionate Use Act.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.
CONCLUSION

For the foregoing reasons, Mr. Smith hereby respectfully requests this Court allow him to present an adequate defense, which necessarily includes a mistake of law defense and third party experts and witnesses.

Respectfully submitted,

DATED:

/s/ Eric D. Shevin
Eric D. Shevin: Ca State Bar 160103
Attorney for STEELE SMITH
Law Offices of Eric D. Shevin
15260 Ventura Blvd., Suite 1050
Sherman Oaks, Ca 91403
Telephone: 818-784-2700
Facsimile: 818-784-2411