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13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16

17 CITY OF OAKLAND,
18 Plaintiff,
19 v.
20 ERIC HOLDER, Attorney General of the
United States; and MELINDA HAAG, U.S.
21 Attorney for the Northern District of
California,
22 Defendants.
23
24
25

No. CV 12-5245 MEJ
Related Cases: No. CV 12-3566 MEJ
No. CV 12-3567 MEJ

**CITY OF OAKLAND’S MOTION TO
STAY LANDLORDS’ “MOTIONS FOR
ORDER PROHIBITING UNLAWFUL
USE OF DEFENDANT PROPERTY” IN
RELATED CASES**

Hearing Date: December 13, 2012
[As Requested in Motion for Order
Shortening Time]
Time: 10:00 a.m.
Courtroom: B

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NOTICE OF MOTION AND MOTION

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 13, 2012, at 10:00 a.m. (as requested by the City of Oakland in its concurrently filed Motion to Shorten Time for hearing on this Motion), or as soon thereafter as the matter may be heard by the Honorable Maria-Elena James in Courtroom B, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiff City of Oakland (“Oakland”) shall and hereby does move the Court for an order staying Claimant Ana Chretien’s Motion for Order Prohibiting Unlawful Use of Defendant Property (“Chretien’s motion”) (Dkt. No. 64) in the related case *United States v. Real Property and Improvements Located at 1840 Embarcadero, Oakland, California*, No. CV 12-3567 MEJ (the “*Harborside Action*”), and Claimant Concourse Business Center’s Motion for Order Prohibiting Unlawful Use of Defendant Property (“Concourse Business Center’s motion”) (Dkt. No. 13) in the related case *United States v. Real Property and Improvements Located at 2106 Ringwood Avenue, San Jose, California*, No. CV 12-3566 MEJ (the “*San Jose Action*”).

This Motion is based on this Notice of Motion and Motion, the supporting Opening Memorandum of Points and Authorities, the Declaration of Cedric C. Chao and exhibits thereto, the Reply papers to be filed by Oakland, and such other written materials and oral argument as may be presented at or before the hearing on this Motion.

RELIEF REQUESTED

The City of Oakland seeks an order staying Claimants Ana Chretien’s and Concourse Business Center’s respective motions until the merits of the City of Oakland’s claims in this action have been finally adjudicated.

STATEMENT OF ISSUES TO BE DECIDED

Whether the Court should stay Claimant Ana Chretien’s and Claimant Concourse Business Center’s respective motions seeking to prohibit the use of the identified real property as medical cannabis dispensaries until the merits of the City of Oakland’s claims in this action have been finally adjudicated. The answer is “yes.”

1 A stay is necessary: (1) to avoid prejudice to the City of Oakland and its residents,
2 including the prejudice to medical patients who will be forced to either purchase medical
3 cannabis on the black market or to forego their medicine; (2) to preserve judicial efficiency and
4 economy; (3) to avoid the risk of inconsistent rulings; and (4) to promote the Court’s efforts to
5 coordinate the three pending actions related to Harborside Health Center’s operations.

6
7 Dated: November 27, 2012

Respectfully submitted,

8 MORRISON & FOERSTER LLP

9 OAKLAND CITY ATTORNEY’S OFFICE

10
11 By /s/ Cedric Chao
12 Cedric Chao

13 Attorneys for Plaintiff
14 CITY OF OAKLAND
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OPENING MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

Plaintiff City of Oakland (“Oakland”) has a comprehensive framework regulating the sale of medical cannabis. Those regulations effectuate state law and ensure safe and affordable access to medical cannabis for patients who suffer from chronic and acute pain, life-threatening and severe diseases, and significant injuries. In the *Harborside Action*, the federal government seeks to undermine Oakland’s efforts by seeking forfeiture in connection with the operations of Harborside Health Center. The City of Oakland filed this lawsuit (the “*Oakland v. Holder Action*”) to challenge the defendants’ wrongful conduct and to protect its unique public interests and the health, welfare and safety of its residents. As alleged in this action, the *Harborside Action* is illegal because it exceeds the federal government’s authority and is barred by the statute of limitations and the doctrine of equitable estoppel.

Ana Chretien is a claimant in the *Harborside Action*. She has filed a Motion for Order Prohibiting Unlawful Use of Defendant Property (Dkt. No. 64, *Harborside Action*), in which the federal government has filed a joinder (Dkt. No. 66, *Harborside Action*), seeking to enjoin the use of the real property located at 1840 Embarcadero, Oakland, California, to distribute medical cannabis. Ms. Chretien’s standing to bring the motion is premised on the federal government’s civil forfeiture action and Rule G of the Supplemental Rules of the Federal Rules of Civil Procedure. (See Dkt. No. 64, *Harborside Action*, at 4.) Her motion is based exclusively on the government’s representation that the use of the property violates federal law and because “the government has indicated that it wants [her] to take all expeditious steps to halt Harborside’s activities.” (See Dkt. No. 65, Decl. of A. Chretien, *Harborside Action*, at ¶ 12.) Indeed, were it not for the federal government’s pressure and illegal filing of the *Harborside Action*, Ms. Chretien would have no reason to pursue her motion.¹

¹ See Dkt. No. 65, *Harborside Action*, at ¶ 6 (“Up until this action was commenced, I had not received any communication of any kind from the federal government or from any governmental entity advising me that the business being operated by Harborside was potentially in violation of federal law.”).

1 Ms. Chretien's motion should be stayed until after the City of Oakland has had the full
2 opportunity to discover the facts, develop the record, and present its case, and the merits of
3 Oakland's claims are finally adjudicated. Ms. Chretien's motion raises issues that overlap with
4 Oakland's claims — including whether the federal government exceeded its authority by
5 initiating the civil forfeiture action and whether it is likely to succeed on the merits. A premature
6 resolution of those issues on an inadequate record through Ms. Chretien's motion may affect
7 Oakland's claims and potentially prejudice Oakland in the *Oakland v. Holder Action*. If Oakland
8 is correct that the federal government exceeded its authority in filing the *Harborside Action*,
9 Ms. Chretien's motion will likely be moot as the impetus underlying her motion would be
10 eliminated. Indeed, through Ms. Chretien's motion, the government is attempting to do through
11 the back door, *i.e.*, immediately shutter Harborside, what it is unable to do directly through its
12 illegal forfeiture action. Staying Ms. Chretien's motion until final adjudication of the merits of
13 Oakland's action, on the other hand, will enable Oakland to present its case prior to the resolution
14 of Ms. Chretien's motion, will avoid multiple briefings and repeated litigation of the same or
15 similar issues, and will avoid the possibility of inconsistent results.

16 The City of Oakland's requested stay will not prejudice any party. Ms. Chretien's
17 apparent goal is to appease the government. However, the federal government cannot credibly
18 claim harm from the requested stay, since it waited almost *six years* before filing the *Harborside*
19 *Action*. Moreover, the City of Oakland is prepared to proceed expeditiously with discovery and,
20 in fact, already requested that the federal government's counsel engage in the required Rule 26(f)
21 meet and confer; the government, which to date has curiously declined to meet and confer, cannot
22 now turn around and oppose the City of Oakland's requested stay on the ground that a delay in
23 deciding the landlords' motions is prejudicial.

24 Finally, because of the efficiencies in handling the motions at the same time, Oakland also
25 requests a stay of Concourse Business Center's similar motion. As the motions are similar, they
26 should be addressed together after the resolution of the *Oakland v. Holder Action*.

1 **II. THE OAKLAND v. HOLDER ACTION AND THE HARBORSIDE ACTION**
2 **ADDRESS OVERLAPPING ISSUES**

3 **A. The Oakland v. Holder Action**

4 The City of Oakland filed this action on October 10, 2012, seeking declaratory and
5 injunctive relief preventing the government from pursuing the unlawful forfeiture of the property
6 located at 1840 Embarcadero in Oakland, California — owned by Ana Chretien and leased by
7 Harborside Health Center. (Dkt. No. 1, Oakland’s Complaint, ¶¶ 61-80.) As alleged, the
8 defendants acted contrary to law when initiating forfeiture proceedings because forfeiture is
9 barred by the statute of limitations and the doctrine of equitable estoppel. (*Id.*) Harborside has
10 operated openly and continuously at the 1840 Embarcadero location since 2006, in compliance
11 with state law. (*Id.*, ¶¶ 37, 74.) The government filed the forfeiture action on July 9, 2012,
12 considerably more than five years after the offense was discovered or reasonably could have been
13 discovered, and after the statute of limitations had expired. (*Id.*, ¶¶ 63-64.) The forfeiture action
14 against Harborside came after years of reassurance, in words and action, from the federal
15 government that its prosecutorial resources would not be directed at those in compliance with
16 state medical cannabis laws. (*Id.*, ¶¶ 42-51.)

17 **B. The Forfeiture Actions**

18 The *Harborside Action* is the underlying forfeiture action that prompted the *Oakland v.*
19 *Holder Action*. Filed July 9, 2012, the federal government seeks to forfeit the property at 1840
20 Embarcadero in Oakland. (Dkt. No. 1, *Harborside Action*.) Both Ms. Chretien and Harborside
21 filed claims and answers in that case. (*See* Dkt. Nos. 14, 21, 32-33, *Harborside Action*.) In their
22 answers, Ms. Chretien and Harborside both raised affirmative defenses of estoppel and the statute
23 of limitations. (*See* Dkt. No. 32 at 3 and Dkt. No. 21 at 5, *Harborside Action*.)

24 On November 7, 2012, citing Supplemental Rules of Civil Procedure particular to civil
25 forfeiture proceedings, Ms. Chretien filed the motion at issue here for an order prohibiting the
26 “unlawful use” of the property at 1840 Embarcadero. (Dkt. No. 64, *Harborside Action*.)
27 Ms. Chretien admits that the government’s filing of the *Harborside Action* is the reason
28

1 prompting her to seek to evict Harborside. Ms. Chretien stated that she has taken steps to
2 terminate the lease because “the government has indicated that it wants [her] to take all
3 expeditious steps to halt Harborside’s activities.” (See Dkt. No. 65, Decl. of A. Chretien,
4 *Harborside Action*, at ¶ 12.)

5 An order granting Ms. Chretien’s motion would likely force Harborside to close down —
6 an outcome that would be as final and detrimental to Oakland and its citizens, and to medical
7 patients, as if the government had prevailed in its unlawful forfeiture action. Any resolution of
8 Ms. Chretien’s motion will likely implicate the merits of Oakland’s claims.

9 The *San Jose Action* was also filed by the federal government on July 9, 2012, seeking
10 forfeiture of the real property located at 2106 Ringwood Avenue in San Jose, California. The
11 property is owned by Concourse Business Center, LLC, which leases space to Harborside Health
12 Center. On August 29, 2012, Concourse Business Center filed a motion for an order preventing
13 the “unlawful use” of that property. (Dkt. No. 13, *San Jose Action*.) That motion, also rooted in
14 Supplemental Rule G of the Federal Rules of Civil Procedure, makes the same arguments as
15 Ms. Chretien’s motion. A hearing on both Ms. Chretien’s motion and Concourse Business
16 Center’s motion is currently scheduled for December 13, 2012.

17 **C. The Federal Government Delayed in Bringing the Related Forfeiture Actions,**
18 **Which Violate Its Own Policies**

19 The federal government delayed bringing the *Harborside Action* and the *San Jose Action*.
20 Prior to filing the civil forfeiture actions, the government had taken no action against the
21 Ringwood location since it opened in 2010 nor against the Harborside’s Oakland dispensary since
22 it opened in *October 2006*. While federal agents have taken enforcement actions against
23 unlicensed dispensaries since at least 2006, between 2006 and April 2012 federal authorities
24 refrained from acting against duly licensed dispensaries in Oakland. These dispensaries have
25 always operated openly and in the public domain, and Oakland maintains a public registry of
26 permits and open records regarding the permitting process. (Declaration of Cedric Chao in
27 Support of Motion to Stay (“Chao Decl.”) Exs. 1 and 2). These dispensaries have also been
28

1 featured in print media. For example, in April 2007, Harborside and its CEO Stephen DeAngelo
2 were profiled in the San Francisco Chronicle Magazine.²

3 While aware of the City of Oakland's regulatory framework and of the four licensed
4 dispensaries, federal authorities never raised any concerns about Harborside's operations either
5 with Harborside or with Oakland prior to filing its complaint in July 2012, almost *six years* after
6 Harborside's Oakland location opened. On the contrary, the U.S. Department of Justice's and
7 President Obama's official policy was that it would "not be a priority to use federal resources to
8 prosecute patients with serious illnesses or their caregivers who are complying with state laws on
9 medical marijuana."³ In May 2010, Attorney General Holder testified before the House Judiciary
10 Committee regarding federal enforcement policy and the Ogden Memo: "We look at the state
11 laws, and what the restrictions are Is marijuana being sold consistent with state law?"⁴
12 Attorney General Holder reiterated the official policy set forth in the Ogden Memo and
13 acknowledged that it was "incumbent upon me as Attorney General to make sure that what we
14 have set out as policy is being followed by all of the components within the Department of
15 Justice" including the DEA and the Assistant United States' Attorneys. *Id.*

16 _____
17 ² See Katherine Seligman, *Connoisseurs of Cannabis: Like Fine Wine, Growing*
18 *Medicinal Weed Has Become So Specialized as to Inspire Tastings and a New Vocabulary*, S.F.
19 *Chronicle* (Apr. 22, 2007) (Declaration of Cedric Chao in Support of Motion to Stay ("Chao
20 Decl.") Ex. 3); see also Cecily Burt, *Is City Becoming Oaksterdam?*, *Oakland Tribune* (June 16,
21 2007) (Chao Decl. Ex. 4).

22 ³ See Press Release, Department of Justice, Office of Public Affairs, Attorney General
23 Announces Formal Medical Marijuana Guidelines (Oct. 19, 2009) (Chao Decl. Ex. 6);
24 Memorandum from Deputy Attorney General David W. Ogden, *Re: Investigations and*
25 *Prosecutions in States Authorizing the Medical Use of Marijuana* (Oct. 19, 2009) ("Ogden
26 Memo") (Chao Decl. Ex. 7); see also Compl., ¶¶ 42-51. President Obama outlined this policy
27 even earlier. In March 2008, while campaigning in Oregon, he told the Medford Mail Tribune "I
28 think the basic concept of using medical marijuana for the same purposes and with the same
controls as other drugs prescribed by doctors, I think that's entirely appropriate I'm not going
to be using Justice Department resources to try to circumvent state laws on this issue." Gary
Nelson, *He Favors Long-Term Timber-Payments Solution*, *Medford Mail Tribune* (Mar. 23,
2008) (Chao Decl. Ex. 5).

⁴ Hearing on the United States Department of Justice Before the House Comm. on the
Judiciary, 111th Cong. 75-76 (May 13, 2010) (Chao Decl. Ex. 8).

1 As recently as June 2012, Attorney General Holder restated this policy of non-
2 enforcement in testimony before the House Judiciary Committee:

3 [W]e limit our enforcement efforts to those individuals, organizations that are
4 acting out of conformity . . . with state laws, or . . . where distribution centers were
5 placed within close proximity to schools.⁵

6 **III. THE LANDLORDS' MOTIONS SHOULD BE STAYED UNTIL THE CITY OF OAKLAND'S ACTION IS FINALLY ADJUDICATED ON THE MERITS**

7 The Court should stay all matters regarding the landlords' motions because a stay will
8 (1) avoid severe prejudice to Oakland and its residents, (2) result in significant judicial economy
9 and efficiency, (3) avoid the possibility of inconsistent rulings, and (4) promote the Court's
10 efforts to coordinate the three pending actions related to Harborside Health Center's operations.

11 **A. This Court Has the Power to Stay Ms. Chretien's Motion**

12 This Court's power to stay proceedings is "incidental to the power inherent in every court
13 to control the disposition of the causes on its docket with economy of time and effort for itself, for
14 counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). This power
15 "calls for the exercise of judgment, which must weigh competing interests and maintain an even
16 balance." *Id.* at 254-55 (internal citations omitted). In considering a motion to stay, the Court
17 "weighs a series of competing interests: [1] the possible damage which may result from the
18 granting of a stay, [2] the hardship or inequity which a party may suffer in being required to go
19 forward, and [3] the orderly course of justice measured in terms of the simplifying or
20 complicating of issues, proof, and questions of law which could be expected to result from a
21 stay." *Fuller v. AmeriGas Propane, Inc.*, 2009 U.S. Dist. LEXIS 71413, at *4 (N.D. Cal. Aug. 3,
22 2009) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at
23 254-55)). A court may assert its power to delay action in a case pending the outcome of
24 independent proceedings that will have a potentially dispositive effect on central issues within the
25 case. *See Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979) ("A

26 _____
27 ⁵ Hearing on Oversight of the United States Department of Justice Before the House
28 Comm. on the Judiciary, 112th Cong. 21 (June 7, 2012) (Chao Decl. Ex. 9).

1 trial court may, with propriety, find it is efficient for its own docket and the fairest course for the
 2 parties to enter a stay of an action before it, pending resolution of independent proceedings which
 3 bear upon the case.”). The proceeding, to be stayed, need have only a potentially dispositive
 4 effect on the issues involved in the current case. *See Seastrom v. Dept. of the Army*, 2009 U.S.
 5 Dist. LEXIS 21775, at *4 (N.D. Cal. Mar. 4, 2009) (granting motion to stay proceedings pending
 6 Ninth Circuit decision to grant en banc review of interlocutory appeal because the issue before the
 7 Ninth Circuit was “potentially dispositive” of the case). A stay is “especially” appropriate “in
 8 cases of extraordinary public moment,” where “the individual may be required to submit to delay
 9 not immoderate in extent and not oppressive in its consequences if the public welfare or
 10 convenience will thereby be promoted.” *Landis*, 299 U.S. at 256.

11 **B. The Pertinent Factors Strongly Favor a Stay of the Landlords’ Motions**

12 **1. The City of Oakland’s Rights and Interests in this Litigation Will Be**
 13 **Substantially Harmed in the Absence of a Stay**

14 A stay is necessary to preserve the rights of Oakland and its residents in the *Oakland v.*
 15 *Holder Action*. *First*, if Ms. Chretien’s motion is granted, the federal government may obtain
 16 through the back door a shuttering of Harborside’s medical dispensary through its forfeiture
 17 action *even though the forfeiture action is barred*, as alleged in the Complaint in this action. That
 18 result would be fundamentally unfair. The City of Oakland should have the opportunity to show
 19 why the federal government’s forfeiture action is barred before any motion that would shutter
 20 Harborside pursuant to that same forfeiture action is decided. Accordingly, the City of Oakland’s
 21 claims should be heard and finally adjudicated before Ms. Chretien’s motion is heard. If the City
 22 of Oakland prevails on any of its claims, Ms. Chretien’s motion will likely be moot.

23 *Second*, because Harborside’s defenses to the motion and affirmative defenses alleged in
 24 its Answer overlap with the City of Oakland’s affirmative claims, there is a substantial risk that
 25 Ms. Chretien’s motion will force the Court to address prematurely the merits of Oakland’s claims
 26 before Oakland has had the opportunity to develop and present its case. The hearing on
 27 Ms. Chretien’s motion is scheduled for December 13, 2012, just three days after the federal
 28 government’s deadline to file a responsive pleading to the City of Oakland’s complaint, and

1 several weeks before the January 10, 2013 case management conference. Ruling upon
2 Ms. Chretien’s motion could require the Court to address the merits of the City of Oakland’s
3 claims before Oakland has had the opportunity to present them in the *Oakland v. Holder Action*.
4 The City of Oakland should not be prejudiced by having its claims prematurely addressed on a
5 stillborn record.

6 *Third*, the rights of the City of Oakland’s residents to safe access to medical cannabis
7 would be harmed should the Court preliminarily order Harborside to stop dispensing medical
8 cannabis. As discussed in Section C below, were Harborside to close, patients in need of medical
9 cannabis will be forced to either turn to street criminals to obtain unregulated and potentially
10 adulterated or unsafe cannabis, or go without necessary medication, adversely impacting the
11 public health, welfare, and safety.

12 **2. A Stay Will Not Cause Significant Harm to the Federal Government** 13 **or Ms. Chretien**

14 Neither the federal government nor Ms. Chretien will suffer any hardship from a stay of
15 Ms. Chretien’s motion. Harborside had been operating openly since 2006 — nearly six years —
16 before the federal government’s filing of the forfeiture action. The federal government cannot
17 now credibly complain if the status quo is preserved pending a resolution of the legality of the
18 government’s forfeiture action.

19 In 2006, Ms. Chretien entered a lease agreement with Harborside fully aware that
20 Harborside would operate a medical cannabis dispensary. (*See* Dkt. No. 65, Decl. of A. Chretien,
21 *Harborside Action*, at ¶ 5.) Harborside had a good relationship with Ms. Chretien, and in 2011
22 they renewed the lease to run until approximately January 2016. (*Id.* at ¶ 6.) Ms. Chretien would
23 not be harmed by Harborside’s continued operation during the pendency of this dispute, because
24 she will continue to receive rent according to the terms of the lease as well as payment for
25 building security services. (*See* Dkt. No. 69, Decl. of S. DeAngelo, *Harborside Action*, at ¶ 8.)

26 What concerns Ms. Chretien is not Harborside but the potential vindictiveness of the
27 federal government, which is now pressuring Ms. Chretien to evict Harborside and thereby
28 deprive patients of access to medical cannabis — notwithstanding the government’s assurances

1 over many years that it would not use its prosecutorial resources against dispensaries acting in
2 compliance with state law. Ms. Chretien acknowledges that she has taken steps to terminate the
3 lease because “the government has indicated that it wants [her] to take all expeditious steps to halt
4 Harborside’s activities.” (Dkt. No. 65, Decl. of A. Chretien, *Harborside Action*, at ¶ 12.) She
5 alleges “irreparable harm” because of the “potential loss of her property” if the government
6 prevails. (Dkt. No. 64, *Harborside Action*, at 9.) A stay of her motion will simply preserve the
7 current lease arrangement while the Court considers the legality of the government’s actions.

8 **3. A Stay Will Promote Efficiency, Conserve Judicial Resources, and**
9 **Avoid Inconsistent Rulings**

10 A stay will promote efficiency, conserve the Court’s and the parties’ resources, and avoid
11 inconsistent rulings. The Court has already coordinated the initial case management conferences
12 of these cases by scheduling them all for January 10, 2013. The Court also has directed the
13 parties to declare any opposition to relating the *Oakland v. Holder Action* to the *San Jose Action*,
14 given that both of these actions are already related to the *Harborside Action*. The Court has
15 recognized that efficient case management will be promoted by administering these three cases on
16 the same timeline. Because there is no prejudice to a stay, the City of Oakland’s motion should
17 be granted for this reason alone.

18 The requested stay also promotes judicial economy. Ms. Chretien’s motion concedes that
19 the Court’s authority to grant the requested relief is found in Rule G of the Supplemental Rules of
20 Civil Procedure, which governs forfeiture actions in rem arising from a federal statute. (Dkt. No.
21 64, *Harborside Action* at 4.) Indeed, the sole predicate for Ms. Chretien’s motion is the
22 government’s claims in the *Harborside Action*. If the City of Oakland demonstrates that the
23 forfeiture action is barred by law, then the basis for Ms. Chretien’s motion will be undercut, and
24 the motion will be unnecessary and moot.

25 Staying further proceedings on Ms. Chretien’s motion also avoids the risk of inconsistent
26 rulings based on partial briefing of overlapping issues such as the City of Oakland’s claims based
27 on the statute of limitations and the doctrine of equitable estoppel which are at play in both the
28 *Oakland v. Holder Action* and the *Harborside Action*. Those issues should not be addressed until

1 the City of Oakland has had a full opportunity to discover the facts, develop a complete record for
 2 this Court, and present its case. The issues here are of such significance that they are likely to be
 3 presented to the Ninth Circuit Court of Appeals, which court will want a fully developed record.

4 **C. A Stay Promotes the Public Interest**

5 The *Oakland v. Holder Action* raises issues of significant public importance, including the
 6 health, welfare, and safety of its residents. Addressing these weighty issues after all parties,
 7 including the City of Oakland, have had an opportunity to develop and present their claims and
 8 defenses serves the public interest. Accordingly, staying Ms. Chretien’s motion is necessary and
 9 appropriate.

10 *First*, the legal landscape and public discourse concerning medical cannabis is evolving.

- 11 • There is a growing consensus regarding the medical benefits of cannabis for
 12 patients suffering from chronic pain associated with debilitating illnesses such as
 13 cancer, AIDS, and multiple sclerosis.⁶ Indeed, in 2003 the United States
 14 Department of Health and Human Services, as assignee (owner), was awarded a
 15 patent for a synthetic cannabinoid. U.S. Patent No. 6,630,507 B1 (filed Apr. 21,
 16 1999) (Chao Decl. Ex. 11). The patent lauds cannabinoids’ efficacy “in the
 17 treatment and prophylaxis of wide variety of oxidation associated diseases, such as
 18 ischemic, age-related, inflammatory and autoimmune diseases ... [and] in limiting
 19 neurological damage following ischemic insults, such as stroke and trauma, or in
 20 the treatment of neurodegenerative diseases, such as Alzheimer’s disease,
 21 Parkinson’s disease and HIV dementia.” (*Id.* at [57].)
- 22 • As of November 26, 2012, eighteen states and the District of Columbia have
 23 passed legislation legalizing the medical use of cannabis.⁷

24 ⁶ See, e.g., SJ Watson, et al., *Marijuana Medicine: Assessing the Science Base: A*
 25 *Summary of the 1999 Institute of Medicine Report*, 57 Arch Gen. Psychiatry 547 (2000) (Chao
 Decl. Ex. 10); see also Dkt. No. 1, Compl., ¶¶ 25-27.

26 ⁷ Alaska: Alaska Stat § 17.37.010. Arizona: Ariz. Rev. Stat. Ann. §36-2801. California:
 27 Cal. Health & Safety § 11362.7. Colorado: Colo. Rev. Stat § 25-1.5-106. Connecticut:
 Connecticut General Statutes § 21A-254. Washington, D.C.: DC Municipal Regulations § 22-C.
 28 Delaware: Del. Code Ann. Tit. 16, § 4901A. Hawaii: Haw. Rev. Stat. § 329-A. Maine: Me. Rev.
 (Footnote continues on next page.)

- 1 • Two states, Washington and Colorado, have this month decriminalized use of
- 2 cannabis for all purposes.⁸
- 3 • Recently, California Governor Jerry Brown, discussing the recent ballot
- 4 propositions in Washington and Colorado, as well as California’s policy towards
- 5 medical cannabis, stated: “It’s time for the Justice Department to recognize the
- 6 sovereignty of the states.... It shouldn’t try to nullify reasonable state measures....
- 7 We don’t need some federal gendarme to come and tell us what to do.”⁹

8 *Second*, medical cannabis issues concern public health and safety. The City of Oakland’s

9 permitting and regulatory scheme enables Oakland to ensure that the dispensaries sell medical

10 cannabis to only those patients with valid patient identification cards or with a doctor’s

11 recommendation. Regulating permitted dispensaries ensures that the distributed medical cannabis

12 is *safe* and unadulterated by other drugs or pesticides, and that it is dispensed in a *safe*

13 environment. Oakland’s regulations require that the medical cannabis is tested in designated

14 independent laboratories and that all dispensary employees undergo a background check. (*See*

15 Dkt. No. 1, Compl., ¶¶ 23, 29.)

16 *Third*, medical cannabis dispensaries provide revenue to cash-strapped Oakland and allow

17 it to deploy scarce public safety resources to address violent crime. The four licensed

18 dispensaries have provided millions of dollars in business tax revenue to Oakland’s general fund

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20 (Footnote continued from previous page.)

21 Stat. tit. 15, § 5821-A. Massachusetts: The ballot initiative (Question 3) was approved in the

22 November 6 election and will take effect January 1, 2013; it will be codified at Massachusetts

23 General Law § 94G. Michigan: MCL 333.26421-26430. Montana: Mont. Code Ann. § 50-46-

24 301. Nevada: Nevada Revised Statutes § 453A.010. New Jersey: New Jersey Revised Statutes §

25 24.61-1. New Mexico: New Mexico Statutes Annotated § 26-2B-1. Oregon: ORS 475.300-

26 475.346. Rhode Island: Public Laws § 21-28.6-1. Vermont: Vermont Statutes Annotated § 4471.

27 Washington: Revised Code of Washington § 69.51A.005.

28 ⁸ *See* Rebecca Richman Cohen, *The Fight Over Medical Marijuana*, N.Y. Times (Nov. 7, 2012) (Chao Decl. Ex. 12).

⁹ *See* excerpts of interview, CNN, *State of the Nation* (Nov. 11, 2012) <http://www.cnn.com/video/#/video/bestoftv/2012/11/11/exp-sotu-candy-crowley-jerry-brown-full-unedited-interview-california-governor.cnn?iref=allsearch>. (Chao Decl. Ex. 13).

1 since 2006, and occupied storefronts that have contributed to the rejuvenation of Oakland's
2 downtown core. (*Id.*, ¶ 34, 53-54.) Harborside Health Center alone has paid city taxes in excess
3 of one million dollars (*See* Dkt. No. 69, Decl. of S. DeAngelo, *Harborside Action*, at ¶ 6), along
4 with an initial permit fee, while its customers pay an 8.75% sales tax on all purchases.

5 Harborside's dozens of employees all receive a salary and full health benefits. (*Id.* at ¶ 4.)

6 *Fourth*, forcing Harborside to shutter will cause Oakland and its residents substantial
7 harm. Closing dispensaries will not reduce the demand for medical cannabis, but will instead
8 create a distribution vacuum that likely will precipitate price increases, crime, and street violence,
9 and health hazards. Instead of obtaining medicine from a safely managed and city-regulated
10 dispensary, medical patients, including the elderly and disabled, will have no option but to seek
11 medical cannabis from street-level drug dealers. This will increase crime and divert scarce
12 Oakland Police Department resources from addressing the violent crime, illegal guns, and other
13 public safety crises that are causing the loss of many lives in Oakland. The City of Oakland may
14 lose its ability to monitor the quality and production methods of medical cannabis, creating health
15 risks for medical patients, who will not know whether their medicine is tainted or produced with
16 harmful chemical additives or pesticides.

17 As discussed above, Harborside has operated its medical cannabis dispensary in the open
18 for more than six years. For more than five years, federal officials have repeatedly acknowledged
19 the states' interests in allowing their citizens to use cannabis for medical reasons without threat of
20 federal prosecution or harassment. In light of significant public concerns at issue here, any
21 decision that would allow the federal government to use the narrow vehicle of civil forfeiture
22 proceedings as an end run around the broad public interests in medical cannabis regulation should
23 be considered carefully, and only after the City of Oakland has had the opportunity to develop the
24 facts and to present its claims.

1 **IV. CONCLUSION**

2 For the reasons discussed above, and that will be presented in the City of Oakland’s Reply
3 papers, the Court should grant the City of Oakland’s Motion and stay Claimants Ana Chretien’s
4 and Concourse Business Center’s respective motions until the merits of the City of Oakland’s
5 claims in this action have been finally adjudicated.

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Dated: November 27, 2012

Respectfully submitted,
MORRISON & FOERSTER LLP
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