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

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

No. CV 12-5245 MEJ

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

**DECLARATION OF ARTURO
 SANCHEZ IN SUPPORT OF CITY OF
 OAKLAND’S REPLY RE ITS MOTION
 TO STAY LANDLORDS’ “MOTION
 FOR ORDER PROHIBITING
 UNLAWFUL USE OF DEFENDANT
 PROPERTY” IN RELATED CASES**

Hearing Date: December 20, 2012
 Time: 10:00 am
 Courtroom: B, Hon. Maria Elena James

1 I, Arturo Sanchez, declare as follows:

2 1. I have personal knowledge of the facts set forth herein, except as to those facts
3 which are asserted upon information and belief, and if called upon to testify, would and could
4 testify as set forth herein. I submit this declaration in support of the City of Oakland's Reply re
5 Motion to say Landlords' "Motions for Orders Prohibiting Unlawful Use of Defendant Property"
6 in Related Cases.

7 **Personal Background**

8 2. I have been employed as a Deputy City Administrator in the City of Oakland since
9 November 1, 2011. From 2004 until 2011, I was the Assistant to the City Administrator.

10 3. Between 2004 and 2009, my job responsibilities did not include oversight of the
11 medical cannabis dispensaries. However, I was involved with the drafting of the original
12 Oakland ordinance in 2003, and participated in enforcement actions against illegal dispensaries. I
13 have been managing the permitting process for all medical cannabis dispensaries in Oakland since
14 2010.

15 **Early Regulation of Medical Cannabis in Oakland**

16 4. In 2000, the City of Oakland established the Oakland Cannabis Buyer's
17 Cooperative ("OCBC") to allow primary caregivers and qualified patients access to safe and
18 affordable medical cannabis.

19 5. In 2001, the federal government enjoined OCBC from distributing medical
20 cannabis. After the closure of OCBC, private unregulated dispensaries opened in the downtown
21 area of Oakland.

22 6. The unregulated dispensaries presented a public health and safety issue because
23 the City of Oakland had no way to ensure that the medical cannabis was unadulterated or that
24 these unregulated businesses were operating safely.

25 7. Without regulation, the City of Oakland could not ensure that medical cannabis
26 was distributed to only those individuals with valid patient identification cards, or that the
27 distributors did not have a criminal record.

28

1 8. In 2003, the California Legislature passed the “Medical Marijuana Program Act”
2 (“MMPA”). My understanding is that the MMPA exempts dispensaries from prosecution under
3 California’s Health and Safety Code.

4 **Adoption of Oakland’s Ordinance Regulating Medical Cannabis Dispensaries**

5 9. In late 2003, following enactment of the MMPA, I assisted with the drafting of an
6 ordinance to regulate medical cannabis dispensaries in order to maintain public health and safety
7 and to ensure safe access to medical cannabis in compliance with state law.

8 10. In February 2004, the Oakland City Council authorized Oakland’s medical
9 cannabis dispensary permitting process, allowing up to four dispensaries to operate as not-for-
10 profit cooperatives. The ordinance is codified at Oakland, Cal., Code of Ordinances, ch. 5.80 et
11 seq.

12 11. In 2004, following enactment of the ordinance, Oakland engaged in a competitive
13 application process that resulted in the granting of four permits. Two of the original permittees
14 failed to comply with Oakland’s regulations, and lost their permits. In late 2005, there was a new
15 round of applications. Harborside Health Center’s permit was approved in April 2006.

16 12. When a dispensary applied for a permit, the application was a matter of public
17 record, including a notice on the property and publication in the Oakland Tribune. When a
18 dispensary received a permit, the dispensary was required to publish notice of the permit.

19 **Oakland Strictly Regulates Licensed Medical Cannabis Dispensaries**

20 13. Pursuant to the ordinance, the City of Oakland actively monitors licensed
21 dispensaries to ensure public safety and safe but limited access to medical cannabis. The City
22 Administrator’s Office dedicates substantial resources to regulating the four licensed dispensaries.
23 In my current position, I devote approximately 30% of my time to facilitating the regulation of
24 medical cannabis dispensaries.

25 14. Harborside’s permit has been renewed each year since 2006. That renewal process
26 is a matter of public record, and the subject of a public hearing. Harborside’s current permit is
27 attached to Mr. Chao’s Declaration in support of the City of Oakland’s Motion to Stay (Dkt. No.
28 16, Ex. 2).

1 15. Some of the key provisions of Oakland’s regulatory framework, as set forth in
2 Harborside’s permit, are the following:

- 3
- 4 • **Compliance with State and Local Law.** The dispensary “must comply with all
5 applicable state and local laws, policies or regulations, including the Health and
6 Safety Code,” municipal codes, and the Americans with Disabilities Act. (Chao
7 Decl. Ex. 2, section II.)
- 8 • **Controlled Access to Dispensaries.** The performance standards ensure public
9 safety by strictly controlling who may enter the dispensary. The dispensary may
10 not dispense medical cannabis to anyone other than “qualified patients or primary
11 caregivers.” (*Id.*, section IV.) Indeed, except for security guards, no one is
12 allowed into the dispensary besides qualified patients and caregivers unless the
13 City of Oakland receives advance notice. (*Id.*)
- 14 • **Employee Background Check.** All employees are subject to a background
15 check, and are prohibited from working at a dispensary if they have a state or
16 federal conviction for a violent felony. (*Id.*) The dispensary must disclose results
17 of employee background checks to the City of Oakland. (*Id.*)
- 18 • **Independent Testing.** The performance standards ensure quality control by
19 requiring testing of medical cannabis by an independent laboratory “to ensure it is
20 free of harmful contaminants.” (*Id.*) The dispensaries are encouraged to disclose
21 the percentage of THC to patients. (*Id.*) My understanding is that Harborside does
22 so.
- 23 • **Recordkeeping and Auditing Requirements.** The performance standards ensure
24 active regulation by City of Oakland officials, and constant access to dispensary
25 records. The dispensary must have an “on-site community relations staff person”
26 to liaise with Oakland officials. (*Id.* section IV.) Dispensaries must track patient
27 visits and purchases, and maintain records of the expiration dates of patients’
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1 medical cannabis recommendations. All records must be disclosed to the City of
2 Oakland on a quarterly basis, and are subject to audit on 24 hours' notice. (*Id.*)

- 3 • **Security.** The performance standards emphasize security for the patients.

4 Dispensaries must have security cameras, at least three full-time security guards,
5 and adequate lighting. (*Id.*)

- 6 • **Avoiding Nuisance.** The performance standards limit any potential nuisance.

7 Dispensaries may not be located within 600 feet of a school, library, youth center,
8 park, or residential zone. (*Id.*) Dispensaries may not sell alcohol, nor can patients
9 use medical cannabis on the premises. (*Id.*) Dispensaries cannot stay open past
10 8:00pm, or open earlier than 7:00am. (*Id.*) Dispensaries must have adequate
11 ventilation and sound absorption. (*Id.*)

12 **No Warnings Regarding Licensed Medical Cannabis Dispensaries**

13 16. I am aware that the federal government has submitted to the Court two letters in
14 support of its opposition to the City of Oakland's Motion to Stay, including a letter from Alameda
15 County District Attorney Nancy O'Malley to Mayor-Elect Jean Quan dated December 8, 2010,
16 and a letter from U.S. Attorney Melinda Haag to then-City of Oakland Attorney John Russo dated
17 February 1, 2011. I remember receiving copies of both of these letters soon after they were
18 delivered.

19 17. I am surprised that the federal government asserts that these letters put the City of
20 Oakland on notice that licensed medical cannabis dispensaries were subject to enforcement
21 actions. Neither letter mentions the four licensed medical cannabis dispensaries. Rather, they
22 relate to an ordinance that the City of Oakland was considering that would have permitted
23 medical cannabis *cultivation facilities*.

24 18. Ms. O'Malley's letter did not even mention the four licensed medical cannabis
25 dispensaries operating at that time, much less question the legality of their operations under state
26 law.

27 19. U.S. Attorney Haag stated that the "Department of Justice is familiar with the City
28 of Oakland's solicitation of applications for permits to operate industrial cannabis cultivation and

1 manufacturing facilities.” I was not surprised that the federal government knew about the
2 ordinance even before it was implemented. Nor was I surprised that Ms. Haag had “consulted
3 with the Attorney General and the Deputy Attorney General” regarding the cultivation ordinance.
4 I believed that senior officials within the U.S. Department of Justice have always been well
5 informed regarding the City of Oakland’s regulation of medical cannabis, and that the
6 government tracked the latest developments.

7 20. Ms. Haag’s letter then discusses federal enforcement policy, including the Ogden
8 Memorandum. She expressed “concern[] about the Oakland Ordinance’s creation of a licensing
9 scheme that permits large-scale industrial cannabis cultivation and manufacturing as it authorizes
10 conduct contrary to federal law and threatens the federal government’s efforts to regulate the
11 possession, manufacturing, and trafficking of controlled substances.”

12 21. She cautioned that if the cultivation ordinance was implemented, “the Department
13 is carefully considering civil and criminal legal remedies regarding those who seek to set up
14 industrial cannabis growing warehouses in Oakland pursuant to licenses issued by the City of
15 Oakland.”

16 22. Ms. Haag’s letter does *not* mention Oakland’s licensed medical cannabis
17 dispensaries, which are not “growing warehouses,” much less indicate that the dispensaries would
18 be subject to enforcement action. Again, this was not surprising to me. I understood that the
19 federal government had been aware of the dispensary regulations ever since they were adopted in
20 2004, and had never raised any concerns with the City of Oakland, nor taken an enforcement
21 action against a licensed dispensary.

22 23. I was encouraged to see that Ms. Haag relied on the Ogden Memorandum in
23 setting forth the government’s enforcement priorities. The City of Oakland’s view was that its
24 medical cannabis dispensary regulations complied with the guidelines set forth in the Ogden
25 Memorandum, and that the licensed dispensaries would not be subject to enforcement.

26 24. I am not aware that any city official received any communication from a state or
27 federal official indicating that the federal government planned to take enforcement actions against
28 the licensed dispensaries until October 2011. I have never seen such a communication.

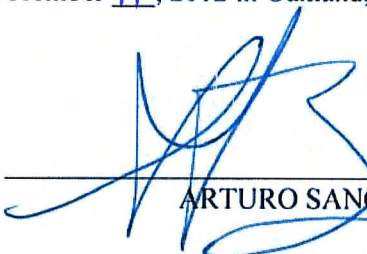
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Closing Oakland’s Dispensaries Will Endanger the Patients and Increase Public Safety Risks

25. I was shocked when I learned that the federal government had initiated a civil forfeiture proceeding in an attempt to close Harborside Health Center. I am very concerned that the government’s enforcement action, which is inconsistent with what I understood to be the federal government’s policy, will hurt medical patients and Oakland residents.

26. Closing Harborside will lead to an increase in street crime. The black market for cannabis has decreased over the past six years, but will heat up again as soon as patients have nowhere else to turn to obtain their medicine. In my position as a Deputy City Administrator with first-hand knowledge of City operations and of Oakland’s medical cannabis regulatory scheme, it is my observation that if the government succeeds in closing down Oakland’s dispensaries, the ill patients will be forced to choose between foregoing their medicine or going into the streets to buy unregulated and possibly adulterated cannabis.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 11, 2012 in Oakland, California.



ARTURO SANCHEZ