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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

No. CV 12-5245 MEJ

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

**CITY OF OAKLAND'S RESPONSE TO
 LETTER FROM FORFEITURE
 CLAIMANTS AND TO DEFENDANTS'
 RESPONSE THERETO**

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1 Plaintiff City of Oakland hereby responds to the Letter from Forfeiture Claimants (Dkt.
2 No. 48) and to the Defendants' Response thereto (Dkt. No. 49). On January 31, 2013, the
3 claimants in Case Nos. CV 12-3566 (MEJ) and 12-3567 (MEJ) submitted a letter requesting the
4 Court to defer certain rulings on the government's Motion to Dismiss. The government's
5 response to the claimants' letter contains assertions and arguments that are inaccurate and that
6 should be rejected.

7 **I. THE GOVERNMENT URGES AN ERRONEOUS AND RADICAL RESULT**
8 **UNDER THE ADMINISTRATIVE PROCEDURE ACT THAT CONTRADICTS**
9 **THE U.S. SUPREME COURT'S HOLDING IN *PATCHAK***

10 The government's response erroneously asserts that this action is "a mere attempt to
11 circumvent the restrictions Congress has set forth in the federal forfeiture scheme on who may
12 properly raise a challenge to the forfeiture of a specific property" (Govt's Response at 2:5-6) and
13 that Oakland's claims are "nothing but defenses to the United States' proposed forfeiture, and
14 those defenses may only be asserted, if at all, within the forfeiture cases themselves." (*Id.* at
15 2:11-14.) The government's response is wrong; urges the Court to make a radical, erroneous, and
16 unprecedented decision under the Administrative Procedure Act ("APA"); would lead to the
17 result that a city and its 400,000 citizens are denied access to the courts and any remedy for their
18 injuries, which cannot have been congress' intent and which indisputably is bad public policy and
19 contrary to our system of laws; and contradicts the U.S. Supreme Court's holding in *Match-E-Be-*
20 *Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, _ U.S. _, 132 S. Ct. 2199, 2210 (2012)
21 ("*Patchak*"). Under *Patchak* and subsequent authority, the forfeiture statute does *not* bar
22 Oakland's APA action.

23 In *Patchak*, the U.S. Supreme Court allowed a plaintiff to proceed under the APA under
24 nearly identical circumstances. There, the plaintiff sued under the APA alleging that the
25 government lacked authority under the Indian Reorganization Act when it took title to land to
26 hold in trust for a tribe seeking to open a casino. *Id.* at 2202-03. As its injury, the plaintiff
27 alleged economic, environmental, and aesthetic harms from the casino's operation, including
28 "increased crime." *Id.* at 2203. The government argued that the plaintiff's APA action was
barred by sovereign immunity given the Quiet Title Act ("QTA"). According to the government,

1 the QTA authorizes suits to challenge title or interest in real property but specifically does not
 2 apply to trust or restricted Indian lands, and therefore the QTA barred the plaintiff from
 3 challenging the government’s title to Indian land under the APA. *Id.* at 2205. In other words, the
 4 government argued that the plaintiff could not circumvent the QTA by proceeding under the
 5 APA. In analyzing the issue, the Court adopted the rule that, “*When a statute ‘is not addressed to*
 6 *the type of grievance which the plaintiff seeks to assert,’ then the statute cannot prevent an APA*
 7 *suit.*” *Id.* (emphasis added). The Court held:

8 The QTA’s “Indian lands” clause does not render the Government
 9 immune because the *QTA addresses a kind of grievance different*
 10 *from the one [the plaintiff] advances [T]he QTA . . . concerns*
 11 *. . . quiet title actions. And [plaintiff’s] suit is not a quiet title*
action, because although it contests the [government’s] title, it does
not claim any competing interest in the [property].

12 *Id.* at 2206 (emphasis added). The Supreme Court explained that quiet title is “understood to
 13 refer to suits in which a plaintiff not only challenges someone else’s claim, but also asserts his
 14 own right to disputed property.” *Id.* The plaintiff in *Patchak*, however, was “not an adverse
 15 claimant”; he did not contend he owned the property; nor did he seek any relief corresponding to
 16 such a claim; he “want[ed] a court to strip the United States of title to the land, but not on the
 17 ground that it is his and not so that he can possess it.” *Id.* at 2207. The Supreme Court held that
 18 the plaintiff, under these circumstances, was “not trying to circumvent the QTA’s ‘Indian lands’
 19 exception.” *Id.* Accordingly, the QTA did not bar the plaintiff’s APA claim or override the
 20 APA’s general waiver of sovereign immunity because his grievance was not addressed by the
 21 QTA. *Id.* See also *Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. Salazar*,
 22 2013 U.S. Dist. LEXIS 12714 (E.D. Cal. Jan. 30, 2013) (same analysis); *Pine Bar Ranch LLC v.*
 23 *Interior Bd. of Indian Appeals*, 2012 U.S. App. LEXIS 25488 (9th Cir. Dec. 13, 2012) (same).

24 The *Patchak* analysis applies here. Oakland’s grievances include that the government’s
 25 forfeiture of the Harborside facility will harm the public health and safety as well as deprive
 26 Oakland of tax revenues (similar to the *Patchak* plaintiff’s grievance of economic, environmental,
 27 and aesthetic harm flowing from a casino’s operation). It is undisputed that the forfeiture statute
 28 does not address Oakland’s grievances (just as the QTA did not address the grievances in

1 *Patchak*). The government concedes that the forfeiture statute allows only those who assert a
 2 direct interest in the property to make a claim, and that Oakland does not assert such an interest.
 3 (*See* Dkt. No. 24, Motion to Dismiss at 6:11-21.) Although Oakland seeks to stop the forfeiture
 4 (just as the plaintiff in *Patchak* attempted to strip the government of title), Oakland does not seek
 5 to do so on the grounds that Oakland has an interest in the Harborside property or that Oakland
 6 should take possession of the property (just as the plaintiff in *Patchak* did not seek to own or
 7 possess the property in his case.) Just as the QTA did not bar the APA action in *Patchak*, the
 8 forfeiture statute does not bar Oakland’s APA action because the forfeiture statute does not
 9 address Oakland’s grievances.

10 *Patchak* forecloses the government’s argument that Oakland cannot proceed under the
 11 APA because the forfeiture statute allows “someone”, *i.e.*, claimants, to contest forfeiture. The
 12 plaintiff in *Patchak* was allowed to proceed under the APA even though he sought to strip the
 13 government of title to land, which was a result available under the QTA. The Court’s analysis
 14 turned on whether the QTA addressed the plaintiff’s “grievance” — not whether the same result
 15 was available under the QTA. Here, *because the forfeiture statute does not address Oakland’s*
 16 *grievances*, the forfeiture statute likewise does not bar Oakland’s APA action even though
 17 Oakland seeks to prevent the forfeiture, which is a result sought by the claimants under the
 18 forfeiture statute.

19 The purpose of the APA is to provide an avenue for redress where no other adequate
 20 remedy is available. That is precisely the situation faced by Oakland and its 400,000 residents.

21 **II. THE GOVERNMENT MISCHARACTERIZES ITS FORFEITURE COMPLAINT**
 22 **AND ALLEGATIONS TO CIRCUMVENT THE STATUTE OF LIMITATIONS**

23 The government’s response mischaracterizes its forfeiture complaint and allegations in an
 24 effort to circumvent the statute of limitations. The government asserts that its Motion to Dismiss
 25 “focus[es] on the fact that the forfeiture complaint asserts violations of 21 U.S.C. § 841, under
 26 which each act of marijuana distribution is a separate violation....” (Gov’t Response at 2:22-23.)

27 The government’s own pleadings in the Harborside forfeiture action, however,
 28 demonstrate that the gravamen of the forfeiture complaint is the continuing operation of the

1 Harborside facility in violation of the Controlled Substance Act: “Since at least 2006 and
 2 continuing to the present, Harborside has operated a marijuana retail store” (Case No. 12-
 3 3567 (MEJ), Dkt. No. 1, Compl., ¶ 12.) In contrast, the Complaint in that action does not identify
 4 any discrete distribution. The government’s response tries to air brush away its own assertion of
 5 and reliance upon 21 U.S.C. § 856, which addresses defendants who “rent, use, or maintain any
 6 place” in connection with distribution of controlled substances. (*Id.*, Compl., ¶ 23.)

7 Because the gravamen of the government’s forfeiture allegations unquestionably focuses
 8 on the continuing operation of a medical cannabis dispensary since 2006, the statute of limitations
 9 for forfeiture accrued when the government knew or should have known of the operations, which
 10 was in 2006, beyond the five-year limitations period.¹

11 **III. OAKLAND SHOULD BE ALLOWED TO DEVELOP ITS CASE AND SEEK**
 12 **REDRESS TO PROTECT THE HEALTH, SAFETY, AND ECONOMIC WELL-**
 13 **BEING OF ITS 400,000 RESIDENTS AGAINST THE INJURY THREATENED BY**
 14 **THE GOVERNMENT’S FORFEITURE ACTION**

15 This case presents a “Perfect Storm” of facts in which the government has relinquished
 16 any right it once may have had to seek forfeiture in connection with Harborside Health Center.
 17 Oakland should be permitted to develop its case to protect, among other compelling interests, the
 18 health and safety and tax revenues of Oakland and its 400,000 residents.

19 The government has been well aware since 2006 that Harborside was operating a medical
 20 cannabis dispensary under a license from Oakland, and the government repeatedly stated — in
 21 both word and action — that it would not prosecute under federal law those who operated
 22 consistently with state medical cannabis laws. Over a number of years, the government
 23 knowingly allowed the market and demand for medical cannabis to grow in Oakland while fully
 24 understanding (and even *admitting* by virtue of its U.S. patent and patent applications (Oakland’s
 25 RJN Exs. 1-3)) that medical cannabis was effective to treat patients and would be in demand.
 26 Now the government threatens egregious harm to Oakland by going back on its word and

27 ¹ Even if the Court were also to consider 21 U.S.C § 841, the government alleges
 28 *continuing* possession since 2006; in other words, the possession started in 2006 and never
 ceased, which leads to the same result of a lapsed statute of limitations.

1 attempting to shut down dispensaries, which will drive thousands of medical patients into the
2 arms of street dealers and precipitate a public health and safety crisis that Oakland is uniquely ill-
3 equipped to handle — the core of Oakland’s grievances. (See Compl., ¶¶ 32-35; Opp. at 7-8). As
4 the forfeiture statute does not address these grievances, Oakland must be permitted to seek relief
5 under the APA per, *inter alia*, the teaching of *Patchak*.

6 **IV. CONCLUSION**

7 Oakland respectfully requests that the Court reject the assertions in the government’s
8 Response to Letter from Forfeiture Claimants, deny the government’s Motion to Dismiss in all
9 respects, and allow Oakland to proceed to develop its case on the merits.

10 Dated: February 5, 2013

Respectfully submitted,

MORRISON & FOERSTER LLP

OAKLAND CITY ATTORNEY

By /s/ Cedric Chao
Cedric Chao

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CITY OF OAKLAND