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15
 16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18

19 CITY OF OAKLAND,

20 Plaintiff,

21 v.

22 ERIC HOLDER, Attorney General of the
 23 United States; and MELINDA HAAG, U.S.
 Attorney for the Northern District of
 24 California,

25 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 MOTION TO STAY
 FORFEITURE PROCEEDINGS
 PENDING APPEAL**

Hearing Date: April 4, 2013
 Time: 10:00 a.m.
 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 Motion to
5 Stay Forfeiture Proceedings Pending Appeal.

6 **Personal Background**

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

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

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

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

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

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

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

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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., a true and correct copy of which is attached hereto as Exhibit 1.

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. Attached hereto as Exhibit 2 is a true and correct copy of a City of Oakland
17 Agenda Report from the Oakland Office of the City Administrator, Special Activity Unit, dated
18 February 27, 2007, which is a publicly available document that describes Oakland’s permitting
19 process, Harborside’s 2006 permit application, and the City’s approval of Harborside’s initial
20 permit.

21 13. When a dispensary applied for a permit, the application was a matter of public
22 record, including a notice on the property and publication in the Oakland Tribune. When a
23 dispensary received a permit, the dispensary was required to publish notice of the permit.

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

25 14. Pursuant to the ordinance, the City of Oakland actively monitors licensed
26 dispensaries to ensure public safety and safe but limited access to medical cannabis. The City
27 Administrator’s Office dedicates substantial resources to regulating the four licensed dispensaries.

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1 In my current position, I devote approximately 30% of my time to facilitating the regulation of
2 medical cannabis dispensaries.

3 15. Harborside's permit has been renewed each year since 2006. That renewal process
4 is a matter of public record, and the subject of a public hearing. Attached hereto as Exhibit 3 is a
5 true and correct copy of Harborside's current Special Activity Permit. It was issued by the City
6 of Oakland on May 24, 2012 and is valid through June 20, 2013.

7 16. Some of the key provisions of Oakland's regulatory framework, as set forth in
8 Harborside's permit, are the following:

- 9 • **Compliance with State and Local Law.** The dispensary "must comply with all
10 applicable state and local laws, policies or regulations, including the Health and
11 Safety Code," municipal codes, and the Americans with Disabilities Act. (Ex. 3,
12 section II.)
- 13 • **Controlled Access to Dispensaries.** The performance standards ensure public
14 safety by strictly controlling who may enter the dispensary. The dispensary may
15 not dispense medical cannabis to anyone other than "qualified patients or primary
16 caregivers." (*Id.*, section IV.) Indeed, except for security guards, no one is
17 allowed into the dispensary besides qualified patients and caregivers unless the
18 City of Oakland receives advance notice. (*Id.*)
- 19 • **Employee Background Check.** All employees are subject to a background
20 check, and are prohibited from working at a dispensary if they have a state or
21 federal conviction for a violent felony. (*Id.*) The dispensary must disclose results
22 of employee background checks to the City of Oakland. (*Id.*)
- 23 • **Independent Testing.** The performance standards ensure quality control by
24 requiring testing of medical cannabis by an independent laboratory "to ensure it is
25 free of harmful contaminants." (*Id.*) The dispensaries are encouraged to disclose
26 the percentage of THC to patients. (*Id.*) My understanding is that Harborside does
27 so.
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- 1 • **Recordkeeping and Auditing Requirements.** The performance standards ensure
2 active regulation by City of Oakland officials, and constant access to dispensary
3 records. The dispensary must have an “on-site community relations staff person”
4 to liaise with Oakland officials. (*Id.* section IV.) Dispensaries must track patient
5 visits and purchases, and maintain records of the expiration dates of patients’
6 medical cannabis recommendations. All records must be disclosed to the City of
7 Oakland on a quarterly basis, and are subject to audit on 24 hours’ notice. (*Id.*)
- 8 • **Security.** The performance standards emphasize security for the patients.
9 Dispensaries must have security cameras, at least three full-time security guards,
10 and adequate lighting. (*Id.*)
- 11 • **Avoiding Nuisance.** The performance standards limit any potential nuisance.
12 Dispensaries may not be located within 600 feet of a school, library, youth center,
13 park, or residential zone. (*Id.*) Dispensaries may not sell alcohol, nor can patients
14 use medical cannabis on the premises. (*Id.*) Dispensaries cannot stay open past
15 8:00 pm, or open earlier than 7:00 am. (*Id.*) Dispensaries must have adequate
16 ventilation and sound absorption. (*Id.*)

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

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

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

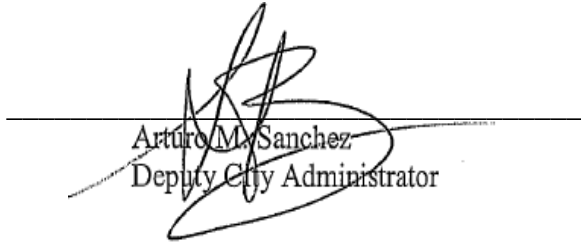
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4 **The Filing and Prosecution of the *Harborside Action* Has Had a Chilling Effect on
Oakland's Medical Cannabis Dispensary Program and Regulatory Scheme**

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6 19. As a result of the United States Department of Justice's ("DOJ") filing and
7 prosecution of *United States v. Real Property and Improvements Located at 1840 Embarcadero,*
8 *Oakland, California*, No. CV 12-3567 MEJ (the "*Harborside Action*"), and the attendant
9 publicity surrounding the DOJ's reversal of its previously announced policy of not using federal
10 resources to prosecute those in compliance with state medical cannabis laws, the government has
11 had a chilling effect on Oakland's medical cannabis dispensary program and regulatory scheme.

12 20. For example, in 2011, the City of Oakland authorized four additional dispensary
13 permits in order to more effectively serve Oakland's diverse communities, and to ensure safe and
14 affordable access to medical cannabis for qualified patients and caregivers. However, because of
15 the government's actions, dispensary permit applicants have had difficulty finding landlords
16 willing to rent a building in which to house dispensaries. To date, only one of the four newly
17 licensed dispensaries has opened.

18 21. In addition, the DOJ's actions have caused the Oakland citizenry, the public, and
19 the medical cannabis community to question the viability of Oakland's medical cannabis program
20 and regulatory scheme, to Oakland's great prejudice.

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct. Executed on February 22, 2013 in Tulum, Quintana Roo, Mexico.

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24 
25 Arturo M. Sanchez
26 Deputy City Administrator
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