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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 CITY OF OAKLAND,
16 Plaintiff,
17 v.

18 ERIC HOLDER, Attorney General of the
United States; and MELINDA HAAG, U.S.
19 Attorney for the Northern District of
California,
20 Defendants.
21

No. CV 12-5245 MEJ

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

DECLARATION OF CEDRIC CHAO:
(1) IN OPPOSITION TO
GOVERNMENT’S “MOTION TO
STAY OBLIGATIONS UNDER RULES
16 AND 26”; AND

(2) IN SUPPORT OF OAKLAND’S
COUNTER MOTION TO STAY THE
FORFEITURE PROCEEDINGS IN
THEIR ENTIRETY, OR, IN THE
ALTERNATIVE, TO CONSOLIDATE
THE THREE ACTIONS FOR
DISCOVERY AND ADR

Hearing Date: TBD
[Government Motion for Order Shortening
Time Requested December 20, 2012]
Time: 10:00 am
Courtroom: B, Hon. Maria Elena James

1 I, Cedric Chao, declare as follows:

2 1. I am a partner at the law firm of Morrison & Foerster LLP, counsel of record for
3 plaintiff City of Oakland (“Oakland”) in this action. I am duly licensed to practice law before the
4 courts in the State of California and before this Court. I make this declaration in opposition to the
5 Government’s “Motion to Stay Obligations under Rules 16 and 26” and in support of Oakland’s
6 Counter-Motion to Stay the Forfeiture Proceedings in Their Entirety, or, in the Alternative, to
7 Consolidate the Three actions for Discovery and ADR. Unless otherwise stated, I have personal
8 knowledge of the facts set forth herein, and if called upon to do so, could and would competently
9 testify thereto.

10 2. I have been attempting to schedule a Rule 26(f) meet and confer session with
11 defendants’ counsel, Ms. Kathryn Wyer, in order to move this case forward expeditiously, since
12 November 9, 2012. On that date, I sent Ms. Wyer a letter proposing to meet in Washington D.C.
13 on November 19 or 20, and if that was not possible, to confer by phone on November 27 or 28.
14 Ms. Wyer responded by email dated November 15, declining to confer with me, stating “I don’t
15 think it would make sense to engage in any 26(f) meet and confer process before our response has
16 been filed.” True and correct copies of my November 9 letter and of Ms. Wyer’s November 15
17 email are attached as Exhibits 1 and 2 hereto.

18 3. On November 23, 2012, I called Ms. Wyer and, among other things, I renewed
19 Oakland’s request to meet and confer under Rule 26(f). Once again, Ms. Wyer refused to set a
20 date to meet and confer, stating that she was under no obligation to do so and that the government
21 would file its response on December 10. I responded that there is no relationship between the
22 government’s response and the parties’ obligation to confer in good faith under Rule 26(f).
23 Indeed, Rule 26(f) states that the parties are to confer “as soon as practicable.”

24 4. On December 7, 2012, I was first notified of the government’s intent to seek, on
25 shortened time, a stay of its Rule 16 and Rule 26 obligations and to continue the long-scheduled
26 Case Management Conference, in an e-mail from Ms. Wyer. On December 9, 2012, I responded
27 to Ms. Wyer’s December 7 e-mail. I reiterated that there is there is no relationship between the
28 government’s response and the parties’ obligation to confer in good faith and promptly under

1 Rule 26(f). In an effort to follow the federal rules and comply with the Court's standing order, I
2 proposed meeting telephonically for 60 to 90 minutes during blocks of time on seven different
3 dates, including December 10, December 11, December 13, December 14, and December 17-19.
4 A true and correct copy of the email string including Ms. Wyer's December 7 email and my
5 December 9 response is attached as Exhibit 3.

6 5. In my December 9 e-mail, I notified Ms. Wyer that Oakland would oppose the
7 government's motion to stay its Rule 16 and 26 obligations. I also notified Ms. Wyer that
8 Oakland would move: (a) to stay the forfeiture proceedings *in their entirety* pending final
9 adjudication of the *Oakland v. Holder* action, or in the alternative, (b) to consolidate the two
10 forfeiture actions with the *Oakland v. Holder* action for the purposes of discovery and ADR, and
11 to schedule the *Oakland v. Holder* case for trial prior to the forfeiture actions.

12 6. I explicitly asked Ms. Wyer to attach my December 9 e-mail explaining Oakland's
13 position as an exhibit to her contemplated motion to stay the government's obligations. She did
14 not do so. By contrast, when Oakland filed its Motion to Shorten Time in Support of Oakland's
15 Motion to Stay for Briefing and Hearing on its Motion to Stay Landlords' "Motions for Order
16 Prohibiting Unlawful Use of Defendant Property" in Related Cases, I made a point of attaching
17 both Ms. Wyer's email and Mr. Perveet's email to our papers which set out their positions. (Dkt
18 17-1, Exs. 1-2).

19 7. I remain willing and able to meet and confer with the government's counsel prior
20 to the December 20, 2012 deadline set by the Court's Scheduling Order. I do not believe a stay of
21 the government's obligation to meet and confer is necessary or appropriate.

22 8. Oakland is prepared to proceed expeditiously with discovery, motion practice and
23 trial.

24 I declare under penalty of perjury that the foregoing is true and correct. Executed on
25 December 14, 2012, in San Francisco, California.

26
27
28 /s/ Cedric Chao

Cedric Chao