

EXHIBIT 3

Chao, Cedric C.

From: Chao, Cedric C.
Sent: Sunday, December 09, 2012 7:17 PM
To: 'kathryn.wyer@usdoj.gov'
Cc: Barbara Parker (BParker@oaklandcityattorney.org)
Subject: Oakland v. Holder -- Follow Up Request for Rule 26 Meet and Confer; Chao's 12/9/12 Response to Wyer's 12/7/12 Email

Follow Up Flag: Follow up

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Dear Kathryn --

I am writing to (1) follow up on my November 9, 2012 letter and our November 23 phone conversation, (2) respond to your December 7 email, and (3) notify you that it is my intention, in the context of responding to your forthcoming motion to stay the federal government's Rule 16 and Rule 26 obligations, to counter-move to ask the Court to either (a) stay the forfeiture actions in their entirety pending final adjudication of the Oakland v. Holder action, or (b) consolidate the two forfeiture actions with the Oakland v. Holder action for the purposes of discovery and ADR, and to schedule the Oakland v. Holder case for trial prior to the forfeiture actions.

1. Oakland's Renewed Request for the Government to Meet Its Obligations Under FRCP 16 and 26 (f):

On November 9, I sent you a letter initiating the meet and confer process under Rule 26(f). Magistrate Judge James has ordered the parties to complete the meet and confer process by December 20, and to confer, among other things, regarding "initial disclosures, early settlement, ADR process selection and discovery plan." I offered multiple dates, including a face to face in Washington DC on November 19 or 20, and a telephone conference on November 27 or 28.

You refused to meet and confer, saying that the government would be responding to the complaint on December 10. On November 23, we spoke by phone and, among other things, I renewed the request to meet and confer under Rule 26(f). You again refused, citing the government's December 10 response. I said then, and I reiterate now, that there is no relationship between the government's response and its obligations to meet and confer in good faith under Rule 26(f).

You may well differ with me regarding the facts and law. But that does not obviate the government's obligation to meet and confer in good faith. I hereby propose the following blocks of time during which I currently can make myself available for our Rule 26(f) conference call (all times proposed are PDT):

-- December 10, 10 am to 5 pm

-- December 11, 9 am to 11:30 am, and 2 pm to 5 pm

-- December 13, 9 am to 3:30 pm

-- December 14, 9 am to 5 pm

-- December 17, 9 am to 5 pm

-- December 18, 9 am to 5 pm,

-- December 19, 9 am to 5 pm.

12/14/2012

Please let me know at your earliest convenience what day and time will work best for you, so we can lock in a time now before schedules change. I think we should block out 60 to 90 minutes for the conference.

2. The Government's Forthcoming Motion to Stay Its Rule 16 and Rule 26 Obligations; Oakland's Counter-Motion to Stay the Forfeiture Actions in Their Entirety or Alternatively to Consolidate the Three Actions for Discovery and ADR and to Assign the Earliest Trial Date to Oakland v. Holder:

The City of Oakland will oppose the government's forthcoming motion to stay its Rule 16 and Rule 26 obligations. Oakland's action raises serious questions about the legality of the government's forfeiture action, as well as issues of compelling public interest, including the impact that depriving patients of their medicine will have on their health and welfare and on Oakland's ongoing public safety crisis.

If, as we believe, the government's forfeiture action against Harborside is unlawful under either or both the statute of limitations or the doctrine of equitable estoppel, then the forfeiture action cannot proceed. The government's strategy appears to be to threaten and pressure the landlords into bringing their motions to prevent the dispensaries from operating. Then, once the dispensaries are shut down, the second step of the government's apparent strategy is to settle with the landlords and withdraw the forfeiture actions. The government's hope is to avoid judicial scrutiny of the legality of the underlying forfeiture action. However, that is not how our system of government is supposed to work -- contrary to your strategy, the executive branch is not above the law.

If the government's forfeiture action is ultimately determined to be lawful, then it can proceed. But if it is adjudged to be unlawful, then the government should not have been permitted in the first instance to have leveraged an illegal forfeiture action to threaten and pressure the landlords into shutting down the dispensaries.

The government's motion to stay its Rule 16 and Rule 26 obligations only serves to highlight the need for the Court to either (a) stay the forfeiture actions *in their entirety* (including staying the landlords' pending motions) until the City of Oakland's challenge to the government's forfeiture action has been fully and finally adjudicated, or (b) consolidate the two forfeiture actions with the Oakland v. Holder action for the purposes of discovery and ADR, with the Oakland v. Holder action proceeding to trial prior to the forfeiture actions.

3. The Government's Request to Continue the CMC in Our Case:

You intend to also seek a stay of our Case Management Conference on the same ground as you seek the stay of the government's Rule 16 and Rule 26 obligations. You alternatively will move to continue the CMC on the ground that you have a hearing in Salt Lake City on January 10.

The City of Oakland opposes the government's effort to delay the CMC in our case -- we want to proceed expeditiously without further delay by the government. We also will oppose your alternative ground for a stay of the CMC, because the Court has effectively determined that efficient case management calls for holding the CMC's in all three actions at the same time and for coordinating the proceedings in the three cases. To the extent that the Court is inclined to move the CMC for all three actions to January 17 (and assuming counsel in the forfeiture actions can also appear), then as an accommodation to your schedule, I represent that I can be available on January 17. However, we object to any attempt by the government to separate the CMC in Oakland v. Holder from the CMC's in the two forfeiture actions.

4. Hearing Date on the Government's Motion to Dismiss:

You indicate that you will notice the hearing on the government's motion to dismiss for January 17, 2013. As I informed you on November 23, the holidays make your proposed schedule problematic because our opposition will be due on December 27, two days after Christmas. However, because the City of Oakland is prepared to move its case forward expeditiously, we will do what we have to do at some personal sacrifice to get our opposition on file on December 27. Our agreement to do so -- which will permit you to retain your January 17 hearing date -- is contingent on (a) your explicit commitment now that you will file your reply on January 3 per the local rules and will not seek a continuance of your reply deadline or of the hearing, and (b) our ascertaining that the Court can entertain the motion on January 17. If either condition (a) or (b) cannot be fulfilled, then I will ask that the hearing date be set for January 31 in order that our opposition papers can be filed on January 10 which will give me time back in the US to fully participate in the final preparation of the opposition. Please advise at your earliest convenience in this regard.

Finally, please attach this email to your moving papers and to your motion to shorten time. Please feel free to call me to discuss any of the above. Thank you.

Regards,

Cedric C. Chao
Morrison & Foerster
425 Market Street
San Francisco, CA 94105
Tel: (415) 268-7061
Fax: (415) 268-7522
cchao@mofocom

-----Original Message-----

From: Wyer, Kathryn (CIV) [<mailto:Kathryn.Wyer@usdoj.gov>]
Sent: Friday, December 07, 2012 9:59 AM
To: Chao, Cedric C.
Subject: Oakland v. Holder -- motion to stay Rule 16 obligations, continue CMC

Cedric,

As you know, the defendants' response to the Complaint in the City of Oakland case is due this Monday. Defendants plan to file a motion to dismiss on the grounds that, among other things, the APA does not waive sovereign immunity for plaintiff's claims in light of the exclusive remedy available through the forfeiture process. Because, in defendants' view, the Court lacks subject matter jurisdiction over this action, defendants believe it would be inappropriate to initiate any discovery at this time and intend to seek a stay of Rule 16 and 26 obligations, including participation in a case management conference, until the Court rules on defendants' motion to dismiss. (Defendants plan to notice the motion to dismiss for 1/17/13.) Defendants also intend to seek a continuance of the CMC on the alternative ground that I have a hearing in another case scheduled in Salt Lake City on January 10, when the CMC is currently scheduled.

Defendants plan to file the motion to stay or in the alternative to continue on Monday. Please let me know if plaintiff is willing to stipulate to a stay and/or continuance. If plaintiff is not willing to so stipulate, defendants will also move to brief the motion to stay on a shortened briefing schedule. Feel free to call me if you would like to discuss. Thanks,

Kathy

Kathryn L. Wyer
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
Delivery: 20 Massachusetts Ave., NW, Room 7124 Washington, DC 20530
Mail: P.O. Box 883, Washington, DC 20044 Tel. 202 616-8475 Fax 202-616-8470 kathryn.wyer@usdoj.gov