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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 COUNTY OF SANTA CRUZ, CALIFORNIA;
17 CITY OF SANTA CRUZ, CALIFORNIA;
VALERIE CORRAL; ELADIO V. ACOSTA;
18 JAMES DANIEL BAEHR; MICHAEL
CHESLOSKY; JENNIFER LEE HENTZ;
19 DOROTHY GIBBS; HAROLD F. MARGOLIN;
and WO/MEN'S ALLIANCE FOR MEDICAL
20 MARIJUANA

21 Plaintiffs,

22 v.

23 JOHN ASHCROFT, Attorney General of the
United States; KAREN P. TANDY,
Administrator of the Drug Enforcement
24 Administration; JOHN P. WALTERS, Director of
the Office of National Drug Control Policy; and
25 30 UNKNOWN DRUG ENFORCEMENT
ADMINISTRATION AGENTS,
26

27 Defendants.
28

Case No.: 03-CV-1802 JF (PVT)

**FURTHER JOINT CASE
MANAGEMENT STATEMENT AND
CASE MANAGEMENT
ORDER**

Date: May 10, 2004
Time: 10:30 a.m.
Place: Courtroom 3, 5th Floor
Judge: Hon. Jeremy Fogel

1 Plaintiffs County of Santa Cruz, California; City of Santa Cruz, California;
2 Valerie Corral; Eladio V. Acosta; James Daniel Baehr; Michael Cheslosky; Jennifer Lee Hentz;
3 Dorothy Gibbs; Harold F. Margolin; and Wo/Men’s Alliance for Medical Marijuana (collectively
4 “Plaintiffs”) and Defendants John Ashcroft, Karen P. Tandy, and John P. Walters (collectively
5 “Official-Capacity Defendants”) jointly submit this Further Joint Case Management Statement
6 and Proposed Case Management Order, and request the Court to adopt it as its Case Management
7 Order in this case.¹

8 **I. DESCRIPTION OF THE CASE**

9 The parties have previously provided the Court with a description of the case in
10 their first Joint Case Management Statement filed on August 14, 2003.

11 **II. PARTIES WHO HAVE NOT BEEN SERVED**

12 The 30 Unknown DEA Agent Defendants remain unserved. Defendants provided
13 a response to Plaintiffs’ First Set of Special Interrogatories providing the names of the
14 unidentified agents. However, this Court’s October 8, 2003 Order extended Plaintiffs’ time to
15 serve those agents until “30 days after the Ninth Circuit issues a ruling in the Related Case,
16 *Wo/Men’s Alliance for Medical Marijuana, et al., v. United States. . .*” The Ninth Circuit has
17 not yet ruled on that matter. Whether Plaintiffs serve the 30 Unknown DEA Agent Defendants
18 also depends on whether this litigation is stayed pending determination of related legal issues on
19 appeal and whether Plaintiffs file an amended complaint in this case.

20 **III. PROCEEDINGS TO DATE**

21 Plaintiffs’ prior Joint Case Management Statement provided the Court with a
22 summary of proceedings through August 8, 2003. On August 28, 2003, this Court issued an
23 Order Denying Plaintiffs’ Motion for Preliminary Injunction and Granting Defendants’ Motion
24 to Dismiss With Leave to Amend. On October 8, 2003, the Court stayed these proceedings
25 pending the outcome of related cases in the Ninth Circuit. The Court also granted Plaintiffs’
26

27 ¹ The “30 Unknown DEA Agent” defendants have not yet been served, and therefore did
28 not participate in preparation of this Case Management Statement.

1 request to extend time to serve the 30 unknown DEA agents.

2 Based on new law in the Ninth Circuit, *Raich v. Ashcroft*, 352 F.3d 1222 (9th Cir.
3 2003), the Court granted Plaintiffs' *Ex Parte* Request to Lift Stay and for Leave to File Motion
4 for Reconsideration on January 20, 2004. On April 21, 2004, the Court issued an Order Granting
5 Plaintiffs' Motion for Reconsideration that also granted Plaintiffs' Motion for Preliminary
6 Injunction and denied the Government's Motion to Dismiss Claim 3 of Plaintiffs' Complaint.
7 The Court did not reconsider its earlier decision to dismiss Claims 1, 2, 4, and 5 with leave to
8 amend. Plaintiffs have until July 20, 2004 to amend Claims 1, 2, 4, and 5. Pursuant to the April
9 21, 2004 Order, Plaintiffs submitted a proposed order granting preliminary injunction on April
10 30, 2004.

11 **IV. PENDING MOTIONS**

12 There currently are no motions pending.

13 **V. MOTIONS EXPECTED BEFORE TRIAL**

14 The parties jointly seek, and stipulate to, a stay of discovery and further
15 proceedings in this litigation pending the outcome of relevant appeals in *Raich v. Ashcroft* and
16 the Related WAMM Motion for Return of Property. If a stay is not entered, Plaintiffs anticipate
17 filing Motions for Summary Judgment or Motions for Summary Adjudication before trial.

18 **VI. ALTERNATIVE DISPUTE RESOLUTION**

19 The parties agree that because of the constitutional issues raised by this case, this
20 case is not appropriate for Alternative Dispute Resolution.

21 **VII. AMENDMENTS TO PARTIES**

22 Plaintiffs anticipate substituting actual parties in place of the 30 Unknown DEA
23 Agent Defendants if they serve those agents. Whether Plaintiffs serve the 30 Unknown DEA
24 Agent Defendants also depends on whether this litigation is stayed pending determination of
25 related legal issues on appeal and whether Plaintiffs file an amended complaint in this case.

26 **VIII. DISCLOSURES**

27 Plaintiffs and Official-Capacity Defendants agree that all discovery should be
28 stayed pending the outcome the Government's Petition for Writ of Certiorari to the United States

1 Supreme Court in *Raich v. Ashcroft*, the Ninth Circuit's decision in the Related WAMM Case
2 and any subsequent appeals in those cases.

3 **IX. DISCOVERY**

4 Plaintiffs and Official-Capacity Defendants met and conferred regarding
5 discovery on April 28, 2004. These parties agree that all discovery should be stayed pending the
6 outcome of the Government's Petition for Writ of Certiorari to the United States Supreme Court
7 in *Raich v. Ashcroft*, the Ninth Circuit's decision in the Related WAMM Case and any
8 subsequent appeals in those cases.

9 **X. TRIAL SCHEDULE**

10 Plaintiffs and Official-Capacity Defendants agree that selection of a trial date and
11 pre-trial dates should be stayed pending the outcome of the Government's Petition for Writ of
12 Certiorari to the United States Supreme Court in *Raich v. Ashcroft*, the Ninth Circuit decision in
13 the Related WAMM Case and any subsequent appeals in those cases. The parties also agree that,
14 unless this Court's April 21, 2004 Order is reversed on appeal, the preliminary injunction to be
15 entered by this Court pursuant to its April 21, 2004 Order shall remain in effect notwithstanding
16 any stay of discovery or proceedings in this matter, or any appeal of the Court's April 21, 2004
17 Order.

18

19 DATED: May 3, 2004

BINGHAM McCUTCHEN LLP

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By: /s/

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Troy P. Sauro
Attorneys for WAMM Plaintiffs

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CASE MANAGEMENT ORDER

Pursuant to the request and stipulation of the parties, this action shall be stayed pending the outcome of the Government’s Petition for Writ of Certiorari to the United States Supreme Court in *Raich v. Ashcroft*, Ninth Cir. Case No. 03-15481, the Ninth Circuit’s decision in the Related Case of *Wo/Men’s Alliance for Medical Marijuana, et al., v. United States*, Ninth Cir. Case No. 03 - 15062, and any subsequent petitions and/or appeals in those cases. The preliminary injunction to be entered by this Court pursuant to its April 21, 2004 Order shall remain in effect notwithstanding any stay of discovery or proceedings in this matter, or any appeal of the Court’s April 21, 2004 Order, unless the April 21, 2004 Order is reversed on appeal.

The Case Management Statement and Proposed Order is hereby adopted by the Court as its Case Management Order for the case, and the parties are ordered to comply with this Order.

DATED: __5/10/04__

By: __s/electronic signature authroized____
Hon. Jeremy Fogel
UNITED STATES DISTRICT COURT
JUDGE