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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

COUNTY OF SANTA CRUZ, CALIFORNIA;
CITY OF SANTA CRUZ, CALIFORNIA;
VALERIE CORRAL; ELADIO V. ACOSTA;
JAMES DANIEL BAEHR; MICHAEL
CHESLOSKEY; JENNIFER LEE HENTZ;
DOROTHY GIBBS; HAROLD F. MARGOLIN;
and WOMEN’S ALLIANCE FOR MEDICAL
MARIJUANA,

Plaintiffs,

v.

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

Defendants.

Case Number C 03-01802 JF

ORDER DENYING OFFICIAL-
CAPACITY DEFENDANTS’ EX
PARTE MOTION FOR STAY
PENDING APPEAL

[Docket No. 110]

Official-capacity Defendants John Ashcroft, Karen P. Tandy, and John P. Walters
(“Defendants”) move to stay this Court’s order granting Plaintiffs’ motion for a preliminary
injunction. Plaintiffs oppose the motion for stay pending appeal.

The factual and legal background of the present motion was set forth extensively in the
Court’s order of August 28, 2003 denying Plaintiffs’ motion for a preliminary injunction, County

1 of *Santa Cruz, Cal. v. Ashcroft*, 279 F.Supp.2d 1192 (N.D. Cal. 2003). In view of the Ninth
2 Circuit's subsequent decision in *Raich v. Ashcroft*, 352 F.3d 1222 (9th Cir., 2003), and in
3 particular the *Raich* majority's disagreement with this Court's earlier conclusion that
4 enforcement of the Controlled Substances Act ("CSA"), 21 U.S.C. §§ 801, *et seq.*, under the
5 circumstances of this case would not violate the Commerce Clause of the United States
6 Constitution, the Court reconsidered its ruling and granted Plaintiffs' motion. *County of Santa*
7 *Cruz, Cal. v. Ashcroft*, 314 F.Supp.2d 1000 (N.D. Cal. 2004). Defendants now ask the Court to
8 apply the preliminary injunction standard to issue a stay of that order. *See Lopez v. Heckler*, 713
9 F.2d 1432, 1435 (9th Cir. 1983).

10 As they did in opposing Plaintiffs' motion for reconsideration, Defendants argue that the
11 instant case is distinguishable from *Raich*. This Court concluded that the ultimate legal effect of
12 any such distinction was outweighed at the preliminary injunction stage by Plaintiffs' showing of
13 irreparable harm. This Court has expressed repeatedly its utmost respect for and deference to
14 statutes enacted by Congress, *see, e.g., County of Santa Cruz, Cal.*, 314 F.Supp.2d at 1009, and it
15 consistently has affirmed the importance of Congressional judgment as reflected in the CSA.
16 The Court nonetheless has determined that Plaintiffs' high likelihood of success in the Ninth
17 Circuit¹ and showing of irreparable harm entitles Plaintiffs to a preliminary injunction, the effect
18 of which would be negated by a stay. Accordingly, the motion to stay will be DENIED.²

19 IT IS SO ORDERED.

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21 DATED: July 12, 2004

(electronic signature authorized)
JEREMY FOGEL
United States District Judge

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25 ¹ The Court notes that the United States Supreme Court has granted Defendants' petition
26 for a writ of certiorari in *Raich*. Obviously, should *Raich* be reversed, this Court would revert to
its original determination denying Plaintiffs' motion.

27 ² The Court further notes that the instant injunction is limited to the named Plaintiffs and
28 other individuals specifically identified. Nothing in the injunction as such affects Defendants'
right to enforce the CSA generally.

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