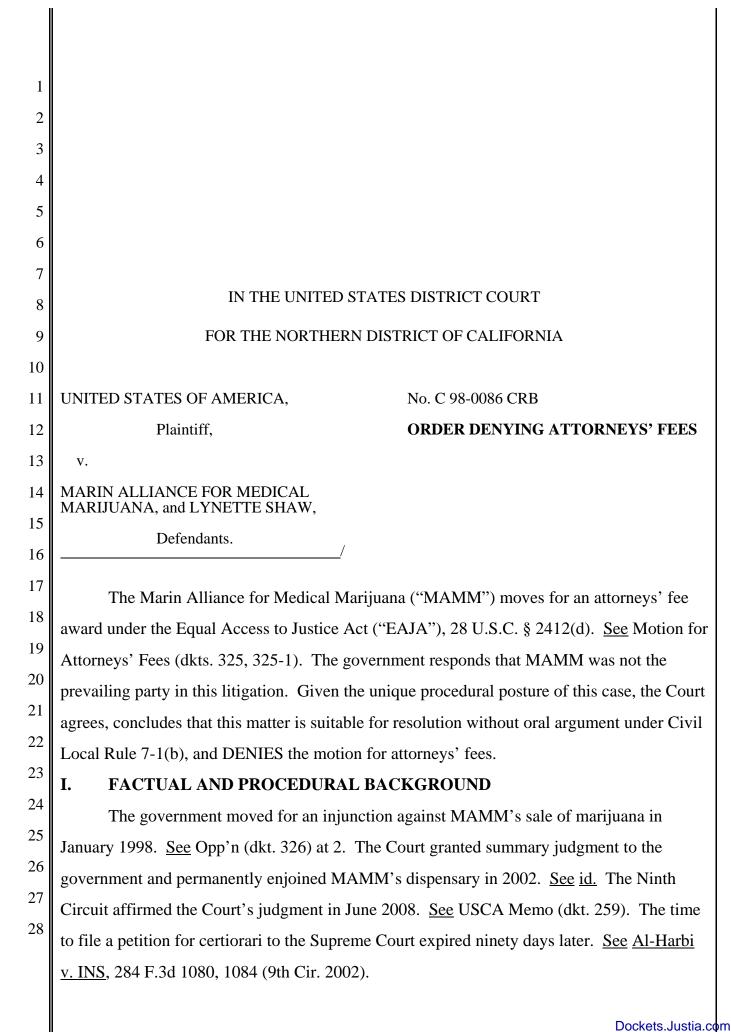
For the Northern District of California

United States District Court



MAMM moved for reconsideration in June 2015, arguing that the Court should 1 2 dissolve the permanent injunction under Rule 60(b). See Reconsideration Motion (dkt. 326) 3 ("Due to changed circumstances since the issuance of the injunction in May, 1998, said injunction is no longer equitable, is against public interest, and is not legally justified As 4 5 a separate and distinct legal basis for dissolution, the injunction is no longer enforceable 6 pursuant to Section 538."). The Court denied the motion for reconsideration, but noted the 7 obvious restrictions that Section 538 placed on the Department of Justice. See Order 8 Denying Motion to Dissolve Permanent Injunction (dkt. 277). MAMM now moves for attorneys' fees related to its Rule 60(b) Motion under the EAJA. See Motion for Attorneys' 9 Fees; 28 U.S.C. § 2412(d). 10

II. LEGAL STANDARD

12 The EAJA created an exception to the American rule requiring parties to bear their own attorney's fees. See Hardisty v. Astrue, 592 F.3d 1072, 1076 (9th Cir. 2010). 13 "Eligibility for a fee award in any civil action requires: (1) that the claimant be a prevailing 14 party; (2) that the Government's position was not substantially justified; (3) that no special 15 16 circumstances make an award unjust; and, (4) pursuant to 28 U.S.C. § 2412(d)(1)(B), that 17 any fee application be submitted to the court within 30 days of final judgment in the action and be supported by an itemized statement." See Comm'r, I.N.S. v. Jean, 496 U.S. 154, 158, 18 110 S. Ct. 2316, 2319, 110 L. Ed. 2d 134 (1990). 19

20 III. DISCUSSION

21 The Ninth Circuit has stated that "a plaintiff was not a prevailing party when he obtained no relief, only a favorable judicial statement of law in the course of litigation that 22 23 result[ed] in judgment against the plaintiff." See Citizens For Better Forestry v. U.S. Dep't 24 of Agr., 567 F.3d 1128, 1132 (9th Cir. 2009) (citing Hewitt v. Helms, 482 U.S. 755, 763, 107 25 S. Ct. 2672, 2677, 96 L. Ed. 2d 654 (1987)). Here, MAMM's Rule 60(b) motion was denied, although MAMM did receive a "favorable judicial statement of law" related to Section 538. 26 See id.; Order Denying Motion to Dissolve Permanent Injunction (dkt. 277). Citizens For 27 28 Better Forestry and Hewitt thus squarely foreclose an EAJA fee award in this case. See id.

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IV. CONCLUSION

The Court concludes—based on the unique procedural posture of this case—that MAMM has failed to establish its entitlement to an EAJA attorney fee award. The Court DENIES the motion.

IT IS SO ORDERED.

Dated: August 4, 2016

CHARLES R. BREYER UNITED STATES DISTRICT JUDGE