EXHIBIT I

9-11 (rev. 5/00)

Form 6. Civil Appeals Docketing Statement

USCA DOCKET # (IF KNOWN)

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL:
UNITED STATES v. MARIN ALLIANCE FOR MEDICAL MARIJUANA: LYNETTE SHAW, D.C.

DISTRICT: Northern CA **JUDGE:** Hon. Charles Breyer

DISTRICT COURT NUMBER: CV-98-00086-CRB

DATE NOTICE OF APPEAL FILED:

IS THIS A CROSS-APPEAL? ☐ YES

IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY):
Please see attachment.

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW:
Please see attachment.

PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL:
Please see attachment.

PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS):
Please see attachment.

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

☐ Possibility of settlement

☐ Likelihood that intervening precedent will control outcome of appeal

☐ Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (Specify) _____

☐ Any other information relevant to the inclusion of this case in the Mediation Program _____

☐ Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges

LOWER COURT INFORMATION

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ORDER APPEALED	RELIEF
☒ FEDERAL QUESTION	☒ FINAL DECISION OF DISTRICT COURT	☐ DEFAULT JUDGMENT	☐ DAMAGES: SOUGHT $_____ AWARDED $_____
☐ DIVERSITY	☐ INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT	☐ DISMISSAL/JURISDICTION	☒ INJUNCTIONS:
☐ OTHER (SPECIFY):	☐ INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY):	☐ DISMISSAL/MERITS	☐ PRELIMINARY
		☒ SUMMARY JUDGMENT	☒ PERMANENT
		☒ JUDGMENT/COURT DECISION	☒ GRANTED
		☐ JUDGMENT/JURY VERDICT	☐ DENIED
	☐ OTHER (SPECIFY):	☐ DECLARATORY JUDGMENT	☐ ATTORNEY FEES: SOUGHT $_____ AWARDED $_____
		☐ JUDGMENT AS A MATTER OF LAW	☐ PENDING
		☐ OTHER (SPECIFY):	☐ COSTS: $_____

CERTIFICATION OF COUNSEL

I CERTIFY THAT:

1. COPIES OF ORDER/JUDGMENT APPEALED FROM ARE ATTACHED;
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2).
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.

Greg Anton
GREG ANTON
Signature

August 1, 2005
Date

COUNSEL WHO COMPLETED THIS FORM

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THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL
IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS

ATTACHMENT TO NINTH CIRCUIT COURT OF APPEALS
DOCKETING STATEMENT

United States v. Marin Alliance for Medical Marijuana; Lynette Shaw, D.C.
Northern District of California, Case No. C-98-00086-CRB

I. If This Matter Has Been Before This Court Previously, Please Provide The Docket Number and Citation (If Any):

United States v. Marin Alliance for Medical Marijuana; Lynette Shaw, Case No.. 02-16335 has previously been before the Ninth Circuit Court of Appeals as part of a consolidation with the case of *United States v. Oakland Cannabis Buyer's Cooperative* No. CV-98-00088. The issues are very similar in both cases and most previous pleadings and orders involving *United States v. Oakland Cannabis Buyer's Cooperative* pertain to *U.S. v. Marin Alliance et al.* As well, Marin Alliance intends a similar consolidation on this appeal.

II. Brief Description of Nature of Action and Result Below:

In November 1996, California voters enacted an initiative measure entitled the Compassionate Use Act of 1996 (Proposition 215), to permit seriously ill patients and their primary caregivers to possess and cultivate cannabis with the approval or recommendation of a physician. To implement the will of California voters, Appellants organized a Cooperative to provide seriously ill patients with a safe and reliable source of medical cannabis. The Cooperative, a not-for-profit organization, operates in downtown Fairfax, in cooperation with the City of Fairfax and its police department.

On January 9, 1998, the United States sued in the United States District Court for the Northern District of California, seeking to enjoin Appellants from distributing cannabis to patient-members. On May 19, 1998, the district court issued a preliminary injunction enjoining Appellants from "engaging in the manufacture or distribution of marijuana, or the possession of marijuana with the intent to manufacture and distribute marijuana, in violation of 21 U.S.C. Section 841(a)(1)."

On October 13, 1998, the district court held Appellants in contempt of the preliminary injunction. The district court then modified the injunction to permit the U.S. Marshal to seize Appellants' offices. Appellants informed the district court that they would comply with the injunction. Appellants also requested that the injunction be modified to permit distribution of cannabis to the limited number of patients who could demonstrate necessity under the standard set forth in *United States v. Aguilar*, 883 F.2d 662 (9th Cir. 1989) and submitted numerous declarations in support of this request. The district court denied that motion.

On September 13, 1999, this Court reversed the district court's denial of the motion to modify and remanded the case to the district court, holding that (1) the court could take into account a legally cognizable defense of necessity in considering the proposed modification (*United States v. Oakland Cannabis Buyers' Coop.*, 190 F.3d 1109, 1114 (9th Cir. 1999)), (2) in exercising its equitable discretion, the court must expressly consider the public interest in the availability of a doctor-prescribed treatment that would help ameliorate the condition and relieve the pain and suffering of persons with serious or fatal illnesses, and (3) the record before the district court justified the proposed modification. *Id.* at 1114-15.

On remand to the district court on May 30, 2000, Appellants renewed their motion to modify the preliminary injunction, submitting more declarations to establish that patient-members could meet all of the *Aguilar* requirements for a claim of necessity.

On July 25, 2000, the government noticed an appeal from the district court's order modifying the injunction. On November 27, 2000, the Supreme Court granted the government's petition for writ of *certiorari* to review this Court's September 13, 1999 opinion. This Court suspended proceedings to await the Supreme Court's ruling. On May 14, 2001, the United States Supreme Court reversed this Court's decision and remanded the case for further proceedings. *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001).

On December 4, 2001, this Court remanded the case to the district court for "proceedings consistent with [the Supreme Court's] opinion." On January 7, 2002, Appellants moved after remand to dissolve or modify the

preliminary injunction order. On January 25, 2002, the government moved for summary judgment and permanent injunctive relief.

On May 3, 2002, the district court granted the government's motion for summary judgment and requested that Appellants file further submissions with the Court "concerning the likelihood of future violations of the Act, and in particular, whether there is a threat that defendants, or any of them, will resume their distribution activity if the Court does not enter a permanent injunction." On May 22, 2002, Appellants filed a submission objecting to the procedure on the grounds of invasion of the attorney-client privilege and the violation of Jeffery Jones's Fifth Amendment privilege against self-incrimination. On June 10, 2002, Judge Breyer permanently enjoined Appellants from possessing with intent to distribute, manufacturing or distributing cannabis and judgment was entered thereon. On July 29, 2002, the district court granted Appellants' Motion for Partial Judgment Pursuant to Federal Rule of Civil Procedure 54(b).

On August 1, 2002, Appellants appealed this final judgment under 28 U.S.C. § 1291, as well as all other interlocutory orders. The appeal raised the issues identified in Section III *infra* in addition to the issue of whether the injunction exceeded the powers of Congress under the Commerce Clause or Necessary and Proper Clause because the government failed to establish that Appellants' economic activities have a substantial effect on interstate commerce, and because the injunction improperly applied to entirely non-economic activities. After full briefing on the merits and oral argument, a three-judge panel of this Court took the case under submission.

During the pendency of this appeal, a related case entitled *Raich v. Ashcroft*, No. 03-15481, was fully briefed, argued, and taken under submission by a separate three-judge panel of this Court. On December 16, 2003, the panel issued an opinion in which it reversed the district court's denial of a preliminary injunction against the government precluding enforcement of the Controlled Substances Act ("CSA") "to prevent [individual patients] Raich and Monson from possessing, obtaining, or manufacturing cannabis for their personal medical use." *Raich v. Ashcroft*, 352 F.3d 1222, 1226 (9th Cir. 2003). The Court reasoned that the district court's denial of preliminary injunctive relief was reversible error, because the "CSA is an unconstitutional exercise of Congress'[s] Commerce Clause authority." *Id.* at 1227. The federal government petitioned the United States Supreme Court for a writ of *certiorari*.

Pursuant to an order of this Court dated March 24, 2004, submission of the case was vacated to permit the parties to submit supplemental briefing regarding the applicability of this Court's opinion in *Raich*. The case was resubmitted as of April 30, 2004. After the resubmission of the case and before the panel issued an opinion, on June 28, 2004, the United States Supreme Court granted the government's petition for a writ of certiorari in *Raich*. *Ashcroft v. Raich*, 124 S.Ct. 2909 (2004). As a result, this Court issued an order remanding the case to the district court, stating: "The issues in *Raich* may control the outcome in this case. Accordingly, this case is remanded for the district court to reconsider after the Supreme Court has completed its action in *Raich*." United States v. Marin Alliance for Medical Marijuana, 372 F.3d 1047, 1048 (9th Cir. 2004).

On June 6, 2005, the United States Supreme Court reversed this Court's decision in *Raich* and remanded for further proceedings consistent with the opinion. *Gonzales v. Raich*, ___ U.S. ___, 125 S. Ct. 2195, 2215 (2005). On June 6, 2005, the same day on which the Supreme Court issued its opinion in *Raich*, the district court issued and order declining to reconsider its prior rulings in light of the Supreme Court's opinion. Appellants now appeal this final judgment under 28 U.S.C. Section 1291, as well as all other interlocutory orders.

III. Issues Proposed to be Raised on Appeal:

1. Whether the district court erred in determining that there is a rational basis for classifying marijuana among the most dangerous drugs, with no accepted medical use.

a. Whether the district court abrogated its judicial responsibility by stating that the DEA, not the court, shall determine whether or not there is a rational basis for the classification of marijuana. (**See attachment no. 9, Page 9, May 3, 2002 Memorandum and Order**).

2. Whether the district court erred when, under the purported authority of the federal Controlled Substances Act, it enjoined Appellant's wholly intrastate distribution of medical cannabis, when that distribution was undertaken pursuant to state and local laws designed to protect the public health and welfare of California citizens, and

a. where the injunction improperly infringed upon the police powers of the State of California to protect the health and safety of its citizens; and

b. where the injunction improperly infringed upon fundamental rights, by depriving seriously ill patients of an effective means to ameliorate their debilitating pain, blindness, starvation and possible death, and the government failed to offer any legitimate justification for depriving these patients of this necessary medicine.

3. Whether the district court erred when it rejected the claim of Appellants, duly authorized authors of the City of Oakland, to statutory immunity when Appellants were lawfully engaged in enforcing laws related to controlled substances, as required by the statute granting such immunity.

4. Whether the district court abused its discretion when it granted the government's motions for summary judgment and permanent injunction when the government failed to meet its burden of proof and Appellants established legally valid defenses in both motions.

5. Whether the district court abused its discretion when it granted the government's motion for summary judgment and refused to permit Appellants to obtain discovery to be used in opposition to that motion.

IV. Other Legal Proceedings With a Bearing on This Case.

There are currently four related cases pending in this Court that may have a bearing on the outcome of this case. By order of this Court dated December 20, 2002, two of these cases, both related cases in the district court, were previously consolidated with this case: (1) *United States v. Oakland Cannibis Buyer's Cooperative and Jeffrey Brown*, No. 98-00088-CRB; and (2) *United States v. Ukiah Cannabis Buyer's Club et. al.*, No. 02-16715. A third pending case, *County of Santa Cruz v. Gonzales*, No. 04-16291, arises out of the same set of general facts as *Wo/Men's Alliance for Medical Marijuana v. United States*, No. 03-15062, which is currently on remand in the district court and was previously consolidated with this case for the limited purpose of oral argument by an order of this Court dated July 29, 2003. The fourth related case has not been

consolidated with this case, *Raich v. Gonzales*, Nos. 03-15481 and 04-16296.

AFFIDAVIT OF SERVICE

I, KIMBERLY MERCIER, solemnly affirm as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at 50 Santa Rosa Avenue, Santa Rosa, California.

On August 1, 2005, I served the attached:

(DEFENDANT'S) UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CIVIL APPEALS DOCKETING STATEMENT

on the interested parties in said action, by placing a true copy thereof in a sealed envelope addressed as follows:

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_X___ **BY MAIL**: I caused true and correct copies of the above documents, to be placed and sealed in an envelope addressed to the addressee at the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal service that same day.

_____ **BY FACSIMILE**: I caused true and correct copies of the above documents to be faxed to the above-cited party at the above-cited facsimile number.

I affirm under penalty of perjury that the foregoing is true and correct. Executed this 1st day of August, 2005, at Santa Rosa, California.

KIMBERLY MERCIER