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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SULTAN HAMEED, individually
and on behalf of those
similarly situated,

No. 2:10-cv-02276-MCE-CMK

Plaintiffs,

v.

ORDER

IHOP FRANCHISING, LLC;
et al.,

Defendants.

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This Court dismissed Plaintiff's First Amended Complaint (ECF No. 18) and granted Plaintiff twenty days to amend his complaint in accordance with the Memorandum and Order. (ECF No. 32.) Plaintiff instead filed a Declination to Amend First Amended Complaint and Request for Judgment Pursuant to the Federal Rules of Civil Procedure 54(b).¹ (ECF No. 33.)

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¹ All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless otherwise noted.

1 Defendants have filed a Proposed Final Judgment (ECF No. 35) in
2 response, requesting dismissal of Plaintiff's first, third,
3 fourth, and fifth claims with prejudice for failure to file an
4 amended complaint within twenty days, and dismissal of the second
5 claim with prejudice pursuant to Rule 41(a)(1)(A)(i). For the
6 reasons set forth below, this Court declines to dismiss under
7 Rule 54(b), and instead dismisses Plaintiff's first, third,
8 fourth, and fifth claims pursuant to Rule 41(b), and Plaintiff's
9 second claim pursuant to Rule 41(a)(2).

10 Rule 54(b) allows a district court to direct an entry of
11 final judgment on one or more claims, and certify an immediate
12 appeal of those claims. Federal Rules of Civil Procedure, Rules
13 and Commentary Rule 54(b). The original intent behind Rule 54(b)
14 was to promote judicial efficiency by permitting an appeal of
15 adjudicated claims that are separate and distinct from the
16 remaining unresolved claims. Id. Under Rule 54(b), Plaintiff
17 need not wait for a final decision on unrelated claims before
18 proceeding with an appeal. Id. A judge may not grant dismissal
19 pursuant to Rule 54(b) unless three requirements are met: (1) the
20 case must include multiple claims; (2) the trial judge must
21 render a final decision on at least one, but not all, of those
22 claims; and (3) the trial judge must determine that there is no
23 just reason to delay the appeal of the adjudicated claims. Id.

24 Plaintiff's claims easily meet the first two requirements
25 for Rule 54(b) dismissal. The present action consists of five
26 claims, which satisfies the first requirement for multiple
27 claims.

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1 Because Plaintiff has declined to amend his complaint, this Court
2 will render a final judgment on the dismissed claims in
3 satisfaction of the second requirement. As to the third
4 requirement however, this Court cannot find that there is no just
5 reason to delay the appeal of the adjudicated claims.

6 A determination that there is no just reason to delay turns
7 on "separateness." Id. While no bright-line rule defines
8 "separate" for the purposes of Rule 54(b), in general, courts
9 look to practical factors such as whether the claims involve
10 common legal issues, common facts, or overlapping relief. Id.
11 Claims representing only alternate legal theories based on a
12 common set of facts do not constitute separate claims for which
13 certification under Rule 54(b) is appropriate. Hasbrouck v.
14 Sheet Metal Workers Local 232, 586 F.2d 691, 694 (9th Cir. 1978).
15 While some overlap of facts is permitted between the claims, "[a]
16 similarity of legal or factual issues will weigh heavily against
17 entry of judgment under [Rule 54(b)]...." Wood v. GCC Bend, LLC,
18 422 F.3d 873, 882 (9th Cir. 2005) (citing Morrison-Knudsen Co.,
19 Inc. v. Archer 655 F.2d 962, 965 (1981)). The Ninth Circuit has
20 explained that it "cannot afford the luxury of reviewing the same
21 set of facts in a routine case more than once without a seriously
22 important reason." Id.

23 In balancing the interests of justice for a Rule 54(b)
24 dismissal, a court must also consider judicial administrative
25 interests to assure that Rule 54(b) effectively "preserves the
26 historic federal policy against piecemeal appeals." Id. at 878.

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1 The possibility of duplicative proceedings implicates sound
2 judicial administration, and Rule 1 mandates that courts construe
3 the Federal Rules "to secure the just, speedy, and inexpensive
4 determination of every action." Id. at 882-83.

5 The interests of judicial administration disfavor severing
6 claims for appeal which have interlocking facts with the
7 remaining claims in a relatively routine breach of contract case.
8 Plaintiff's claim for accounting cannot be resolved without
9 deciding issues of fact which would necessarily be decided
10 separately in the dismissed claims Plaintiff wishes to appeal to
11 the Ninth Circuit. Plaintiff's proposed order would lead to
12 piecemeal litigation in stark opposition to the policy of
13 Rule 54(b). Plaintiff has not offered any "seriously important
14 reason" to support its contention that there is no just cause to
15 delay the appeal, or that these interwoven claims should be
16 severed. Because the accounting claim is based entirely on the
17 same set of facts underlying the dismissed claims, this Court
18 finds that the claims are not separate. As such, ample "just
19 cause" exists to delay the appeal of the first, third, fourth,
20 and fifth claims, and dismissal pursuant to Rule 54(b) is
21 inappropriate.

22 Though this Court declines to dismiss pursuant to
23 Rule 54(b), another basis for dismissal is proper. Plaintiff was
24 granted twenty days from the date his First Amended Complaint was
25 dismissed on February 10, 2011 to further amend the complaint in
26 accordance with this Court's Order. (ECF No. 32.) Plaintiff has
27 declined the opportunity to amend, and thus, this Court considers
28 the dismissed claims abandoned.

1 Pursuant to Rule 41(b), these four claims are subject to
2 involuntary dismissal for failure to prosecute or to comply with
3 a court order. Plaintiff has expressly stated his desire to
4 discontinue litigation and pursue an appeal. Therefore, the
5 first, third, fourth, and fifth claims are dismissed with
6 prejudice. Dismissal pursuant to Rule 41(b) shall operate as an
7 adjudication on the merits.

8 As to the fate of Plaintiff's second claim for accounting,
9 though it survived Defendants' previous Motion to Dismiss (ECF
10 No. 21), Plaintiff has requested that this Court dismiss this
11 claim as well. Rule 41(a)(2) grants district courts the
12 authority to dismiss an action at a plaintiff's request on terms
13 that the court considers proper. A district court should grant a
14 plaintiff's request for voluntary dismissal under Rule 41(a)(2)
15 unless a defendant can show that it will suffer legal prejudice
16 as a result. Smith v. Lenches, 263 F.3d 972, 975 (9th Cir.
17 2001). The court retains discretion to dismiss an action under
18 Rule 41(a)(2) either with or without prejudice taking into
19 consideration whether it would be inequitable or prejudicial to
20 defendant to allow plaintiff to refile the action. Altman v. HO
21 Sports Co., Inc., 75 Fed. R. Serv. 3d 98, *2 (E.D. Cal. 2009).

22 Defendants have not objected to Plaintiff's request for
23 dismissal of the second claim for accounting, but instead propose
24 that the dismissal be with prejudice. While dismissal under
25 Rule 41(a)(2) is typically granted without prejudice, this Court
26 finds that such a determination would be both inequitable and
27 prejudicial to Defendants. Plaintiff has explicitly stated that
28 he intends to appeal dismissal of the other four claims.

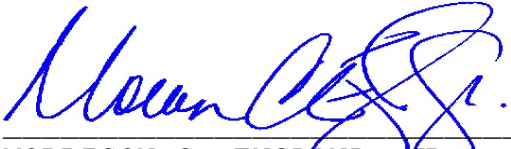
1 To permit Plaintiff to refile the accounting claim in the
2 district court while appealing his other factually identical
3 claims to the Ninth Circuit would not only allow piecemeal
4 litigation, but it would also create an unfair prejudice to
5 Defendants as they may be required to litigate the same matter in
6 two separate courts. In fairness to Defendants, and to leave the
7 present action in one piece, this Court dismisses the remaining
8 accounting claim with prejudice pursuant to Rule 41(a)(2).

9
10 **CONCLUSION**

11
12 Based on the foregoing, Plaintiff's Declination to Amend
13 First Amended Complaint and Request for Judgment Pursuant to
14 F.R.C.P. 54(b) (ECF No. 33) is GRANTED in part. Plaintiff's
15 First, Third, Fourth, and Fifth claims are dismissed with
16 prejudice pursuant to Rule 41(b), and Plaintiff's Second claim is
17 dismissed with prejudice pursuant to Rule 41(a)(2). The Clerk is
18 ordered to close the case.

19 IT IS SO ORDERED.

20 Dated: March 31, 2011

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23 MORRISON C. ENGLAND, JR.
24 UNITED STATES DISTRICT JUDGE
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