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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

AMY MAXWELL,  
Plaintiff,  
v.  
UNILEVER UNITED STATES, INC., et al.,  
Defendants.

Case No. [5:12-cv-01736-EJD](#)

**ORDER DENYING MOTION FOR  
ENTRY OF FINAL JUDGMENT**

Re: Dkt. No. 136

Plaintiff Amy Maxwell (“Plaintiff”) brought this putative class action suit against Defendant PepsiCo, Inc.’s (“PepsiCo”) and several other defendants (collectively, “Defendants”) on behalf of all persons in the United States who, since April 6, 2008 to the present, purchased the same or 83 similar allegedly mislabeled food products. Third Amended Complaint (“TAC”), Dkt. No. 84. On December 8, 2017, the Court stayed all claims except those against PepsiCo under the primary jurisdiction doctrine. Dkt. No. 122. PepsiCo then filed a motion to dismiss the still-pending claims, all of which pertained to Pepsi carbonated soft drinks. Dkt. No. 123. On March 29, 2018, this Court granted PepsiCo’s motion. Order Granting Motion to Dismiss (“Dismissal Order”), Dkt. No. 133. Plaintiff now moves pursuant to Federal Rule of Civil Procedure 54(b) for entry of final judgment on the Pepsi carbonated soft drink claims. Motion (“Mot.”), Dkt. No. 136. For the reasons discussed below, Plaintiff’s motion is DENIED.

**I. LEGAL STANDARD**

Generally, the appellate courts only have jurisdiction to hear appeals from final orders. 28 U.S.C. § 1291. Rule 54(b) allows for an exception to this final judgment rule. It provides:

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1 When an action presents more than one claim for relief – whether as  
2 a claim, counterclaim, crossclaim, or third-party claim – or when  
3 multiple parties are involved, the court may direct entry of a final  
4 judgment as to one or more, but fewer than all, claims or parties  
5 only if the court expressly determines that there is no just reason for  
6 delay. Otherwise, any order or other decision, however designated,  
7 that adjudicates fewer than all the claims or the rights and liabilities  
8 of fewer than all the parties does not end the action as to any of the  
9 claims or parties and may be revised at any time before the entry of  
10 a judgment adjudicating all the claims and all the parties’ rights and  
11 liabilities.

12 “Judgments under Rule 54(b) must be reserved for the unusual case in which the costs and  
13 risks of multiplying the number of proceedings and of overcrowding the appellate docket are  
14 outbalanced by pressing needs of the litigants for an early and separate judgment as to some  
15 claims or parties.” *Morrison-Knudsen Co. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981).  
16 Essentially, the party moving for certification must effectively overcome “the historic federal  
17 policy against piecemeal appeals.” *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980)  
18 (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 438 (1956)).

19 When confronting a certification request, a district court must first determine whether the  
20 motion concerns a “final judgment.” *Curtiss-Wright*, 446 U.S. at 7-8. “It must be a ‘judgment’ in  
21 the sense that it is a decision upon a cognizable claim for relief, and it must be ‘final’ in the sense  
22 that it is ‘an ultimate disposition of an individual claim entered in the course of a multiple claims  
23 action.’” *Id.* at 7 (quoting *Sears*, 351 U.S. at 427). After a district court has determined whether a  
24 judgment is final, it must determine whether, in its discretion, any “just reason for delay” exists.  
25 Fed. R. Civ. P. 54(b). The Court does so by balancing judicial administrative interests and the  
26 equities involved. *Curtiss-Wright*, 446 U.S. at 8, 10. In particular, a court should “consider such  
27 factors as whether the claims under review [a]re separable from the others remaining to be  
28 adjudicated and whether the nature of the claims already determined was such that no appellate  
court would have to decide the same issues more than once even if there were subsequent  
appeals.” *Id.* at 8.

## II. DISCUSSION

The Court’s Dismissal Order qualifies as a final judgment. In her TAC, Plaintiff alleged

1 five causes of action (violations of the FAL, CLRA, and all three prongs of the UCL) by six  
2 categories of products (Pure Leaf products, Brisk Tea products, Bottled (Iced) Tea products,  
3 Lipton Bagged Tea products, Lipton To Go products, and Pepsi products). *See* TAC ¶¶ 210-26,  
4 240-304. The Court’s Dismissal Order dismissed with prejudice all of Plaintiff’s claims with  
5 respect to the Pepsi products category. Dismissal Order 12. As such, it rendered a decision on a  
6 cognizable claim for relief, and ultimately disposed of Plaintiff’s individual claims relating to the  
7 Pepsi products. *Curtiss-Wright*, 446 U.S. at 7.

8 The question then becomes whether there is any “just reason for delay.” *Id.* Plaintiff  
9 argues that there is none, citing three primary reasons: First, there is a strong public interest in the  
10 enforcement of accurate product labeling. Mot. 3. Second, it will likely be a long time before the  
11 remainder of this case is unstayed, the merits adjudicated, and Plaintiff has the opportunity to  
12 appeal the Dismissal Order. *Id.* And, third, the issues that Plaintiff seeks to appeal now are  
13 factually and legally distinct from the remaining claims in this case, as the former are claims  
14 against PepsiCo based on Pepsi carbonated soft drink products, whereas the latter are claims  
15 against Unilever and Pepsi-Lipton Team Defendants based on Lipton tea products. *Id.* at 3-4.

16 PepsiCo disagrees, arguing that Rule 54(b) certification here would result in piecemeal  
17 appeals and inefficient litigation. Opposition (“Opp.”), Dkt. No. 139. Specifically, PepsiCo  
18 points out that certification would not eliminate it as a party, as it would need to remain in this  
19 case to defend the tea labeling claims. *Id.* at 4. PepsiCo also argues that the issues are not  
20 sufficiently distinct, because they are all based on violations of the same statutes and, at least with  
21 respect to Pepsi and Lipton Sweet Tea, there are overlapping factual allegations. *Id.* at 4-5.  
22 Finally, PepsiCo argues that Plaintiff overstates her public interest concerns, and challenges that  
23 she stands to suffer no real harm from delaying her appeal. *Id.* at 6-7.

24 On balance, the Court agrees with PepsiCo that there are just reasons for delay. While it is  
25 true that the claims that remain are based on different products from those that were dismissed  
26 (i.e., tea products as opposed to soft drink products), substantial overlap in factual and legal issues  
27 remain. For example, Plaintiff’s claims relating to Lipton Sweet Tea include the same artificial

1 labelling claims that Plaintiff levied against the Pepsi products. *See* TAC ¶¶ 105-14. In addition,  
2 there is overlap in legal issues, such as Article III and statutory standing, since all of Plaintiff’s  
3 claims arise from the same statutes. *See* TAC ¶¶ 240-304. Based on this, it does not appear that  
4 “no appellate court would have to decide the same issues more than once even if there were  
5 subsequent appeals.” *Curtiss-Wright*, 446 U.S. at 8.

6 In addition, it does not appear that Rule 54(b) certification would create any savings for the  
7 parties. Even if only the tea product claims remain, PepsiCo will remain a party to the case and  
8 will have to at least defend Plaintiff’s allegations that certain tea products are “bottled under the  
9 authority PepsiCo” and “market[ed]” by PepsiCo. TAC ¶¶ 27-29. While it is true, that, as  
10 Plaintiff contends, its role could be more limited, Dkt. No. 140, it will still incur expense, and it is  
11 hard to tell at this early stage how diminished its involvement will be. The speculative nature of  
12 these potential savings diminishes their persuasiveness.

13 Finally, it does not appear that Plaintiff stands to suffer substantial harm if her appeal is  
14 delayed. This case has already been pending for six years, and Plaintiff has not specifically  
15 identified any harm that she or others would stand to suffer from an additional lapse of time before  
16 she is allowed to appeal. Further, it bears mention that Plaintiff herself chose to bundle her Pepsi  
17 product claims in the same complaint as her tea product claims. If Plaintiff wished to instead  
18 pursue these claims in separately timed actions, she could have done so.

19 In sum, because there are overlapping issues and parties and because equitable  
20 considerations do not counteract this clear risk of judicial inefficiency, there is just reason for  
21 delay. Accordingly, the Court declines to enter final judgment on its dismissal of the Pepsi  
22 carbonated soft drink claims. Plaintiff’s motion is DENIED.

23 **IT IS SO ORDERED.**

24 Dated: July 30, 2018



EDWARD J. DAVILA  
United States District Judge