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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLEN PANGELINAN,
Plaintiff,
v.
AZTEC CONTRACTORS, INC.,
Defendant.

Case No.: 3:15-cv-01730

**ORDER DENYING PLAINTIFF'S
MOTION [Doc. 26] FOR ENTRY OF
PARTIAL JUDGMENT**

Pending before this Court is Plaintiff Allen Pangelinan’s (“Plaintiff”) motion for entry of partial judgment under Federal Rule of Civil Procedure 54(b). The Court decides the matter on the papers submitted and without oral argument. See Civ. L. R. 7.1(d)(1). For the reasons stated below, the Court **DENIES** Plaintiff’s motion.

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1 **I. BACKGROUND**

2 On August 28, 2014, Plaintiff attended his son's graduation from boot camp at the
3 Marine Corps Recruit Depot in San Diego ("MCRD"). While attending, Plaintiff sought
4 shade underneath a palm tree. A large piece of the tree, weighing five to six pounds, fell
5 onto his neck and right shoulder, causing him injury. On October 14, 2014, Plaintiff filed
6 a claim with the United States Marine Corps seeking compensation for his injury. The
7 Marine Corps denied this claim on February 5, 2015. Subsequently, on August 4, 2015,
8 Plaintiff filed a Complaint [Doc. 1] with this Court. On April 11, 2016, the Court granted
9 Defendants' first Motion to Dismiss [Doc. 4] Plaintiff's Complaint, allowing leave to
10 amend. On June 9, 2016, Plaintiff filed a First Amended Complaint ("FAC") [Doc. 15]
11 containing two causes of action. The first cause of action alleged negligence on a
12 premises liability theory against Defendant United States. The second cause of action
13 alleges negligence against Defendant Aztec Contractors, Inc., a business entity contracted
14 by Defendant United States to maintain the trees on its property. On December 2, 2016,
15 the Court granted Defendant United States' ("Defendant") second Motion to Dismiss
16 [Doc. 16] with prejudice. Plaintiff now moves unopposed for an entry of final judgment
17 pursuant to Rule 54(b) on their first cause of action against Defendant United States.
18 (See Mot. [Doc. 26].)

19
20 **II. LEGAL STANDARD**

21 Under Rule 54(b), in an action presenting more than one claim for relief or
22 involving multiple parties, "the court may direct entry of final judgment as to one or
23 more, but fewer than all, claims or parties only if it expressly determines that there is no
24 just reason for delay." Fed. R. Civ. P. 54(b). "Judgments under Rule 54(b) must be
25 reserved for the unusual case in which the costs and risks of multiplying the number of
26 proceedings and of overcrowding the appellate docket are outbalanced by pressing needs
27 of the litigants for an early and separate judgment as to some claims or parties."
28 *Morrison-Knudsen Co., Inc. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981). As a general

1 matter, partial judgment under Rule 54(b) is inappropriate where the claims stem from
2 the same transaction or occurrence. *Wood v. GCC Bend, LLC.*, 422 F.3d 873, 879 (9th
3 Cir. 2005).

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5 **I. DISCUSSION**

6 Plaintiff contends that the Court should direct an entry of final judgment on the
7 dismissed claim. Plaintiff's argues that, should this Court's dismissal of the first cause of
8 action later get reversed, there would be unnecessary duplication of work product
9 because "Plaintiff anticipates a number of motions and discovery which will be relevant
10 to [both causes of action]." (Mot. 3:17-18.) The problem with this argument is that it
11 actually favors denial of Plaintiff's motion. Because the dismissed cause of action and
12 the pending cause of action allege similar claims based on the same incident, allowing
13 Plaintiff to appeal the partial dismissal now would likely require the Ninth Circuit to
14 review the same facts and issues in a later appeal taken by whichever party ultimately
15 loses on the remaining claim. Accordingly, the Court finds that Plaintiff has failed to
16 demonstrate that there is no just reason for delay.

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18 **II. CONCLUSION AND ORDER**

19 For the foregoing reasons, the Court **DENIES** Plaintiff's motion for entry of partial
20 judgment.

21 **IT IS SO ORDERED.**

22 Dated: May 18, 2017

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25 Hon. M. James Lorenz
26 United States District Judge
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