

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 09-cv-01041-CMA-KLM

EARL WILLIAM CAMPBELL, JR.,

Plaintiff,

v.

DR. FLOYD POHLMAN, M.D.,
DR. GAGAN SINGH, M.D.,
DR. PAULA FRANTZ, M.D.,
KATHERN RITTENHOUSE, P.A.C.,
BRIAN WEBSTER, P.A.C., and
SERGEANT JOHNSON, LU-3,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR
CERTIFICATION UNDER FED. R. Civ. P. 54(b)**

This matter is before the Court on Plaintiff's Motion for Final Judgment or Rule 54(b) Certification (Doc. # 193). In this motion, Plaintiff requests that the Court enter judgment against Defendants Dr. Pohlman and Mr. Webster. For the following reasons, Plaintiff's Motion is denied.

On May 9, 2011 this Court ordered that summary judgment be entered in favor of Defendant Pohlman and that all claims asserted by Plaintiff against Defendant Pohlman be dismissed with prejudice. The Court also ordered all claims asserted by Plaintiff against Defendant Webster be dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m). (Doc. # 178.) However, Plaintiff's claims against Defendants Rittinhouse,

Johnson, Frantz, and Singh remain alive.¹ Because this Court's previous Order did not dispose of all claims against all Defendants, judgment may only be entered pursuant to the requirements of Fed. R. Civ. P. 54(b). Rule 54(b) provides, in relevant part, that "[w]hen an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay."

To enter a judgment under Rule 54(b), a court must determine that its judgment is final and there are no just reason to delay entry of that judgment. *Stockman's Water Co., LLC v. Vaca Partners, L.P.*, 425 F.3d 1263, 1265 (10th Cir. 2005). The Court's summary judgment order is a final order in that it constitutes the ultimate disposition of Plaintiff's claims against Defendants Pohlman and Webster. However, the Court finds that there is "just reason" to delay entry of judgment. In so finding, the Court heeds the guidance of the Tenth Circuit, which has instructed that "the district court should act as a 'dispatcher' weighing Rule 54(b)'s policy of preventing piecemeal appeals against the inequities that could result from delaying an appeal. *Id.* (citing *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 8 (1980)).

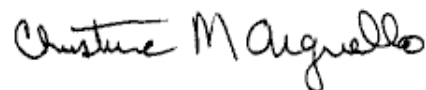
¹ On August 8, 2011, United States Magistrate Judge Kristen L. Mix recommended that summary judgment be entered in favor of these Defendants and against Plaintiff, and that all claims against all Defendants be dismissed with prejudice. (Doc. # 200.) On August 29, 2011, the Court granted Plaintiff's Motion for Extension of Time to File Objections. (Doc. # 205.) Thus, the Court is currently waiting for Plaintiff's objections before it will consider Magistrate Judge Mix's Recommendation.

First, the Court finds that Plaintiff would suffer no prejudice by delay of appellate review. Although Plaintiff conclusorily asserts that delay “would result in an egregious miscarriage of justice and irreparable damage,” Plaintiff offers no explanation as to how delay would be prejudicial and the Court perceives no reason that delay would in fact harm Plaintiff or his case. Second, delaying the entry of final judgment under Rule 54(b) would further Rule 54(b)’s policy of preventing piecemeal appeals. As noted, Magistrate Judge Mix has recommended that the remaining Defendants’ Motion for Summary Judgment (Doc. # 145) be granted. If this Court adopts and affirms that Recommendation, then final judgment will enter and the Tenth Circuit may consider this case in its entirety rather than in piecemeal fashion.² Thus, the Court finds that there exists “just reason” to delay entry of judgment.

Accordingly, it is ORDERED that Plaintiff’s Motion for Entry of Judgment (Doc. # 193) is DENIED.

DATED: August 31, 2011

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge

² If this Court overrules Magistrate Judge Mix’s Recommendation, then the Court may reconsider its denial of this Motion.