

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 11-cv-00520-RM-BNB

HEALTH GRADES, INC.,

Plaintiff,

v.

MDX MEDICAL, INC.,
doing business as Vitals.com,

Defendant.

ORDER

This matter is before the Court on the motion filed by MDx Medical, Inc. (“MDx”) asking for attorneys’ fees and costs and requesting F.R.C.P. 54(b) certification (the “Motion for Fees”) (ECF No. 961). The Court stayed all pending matters in this case during the pendency of the already pending Rule 54(b) appeal with the sole exception of MDx’s request for attorneys’ fees. (ECF No. 953.) Prior to actually filing the instant Motion for Fees, MDx argued that any fee award should be certified alongside the various rulings on the merits that were entered as final judgments and certified for immediate appeal under Rule 54(b). (*See* ECF No. 951.) After reviewing the Motion for Fees, the response and reply, and after full consideration of the issue, it is clear to the Court that the interests of judicial efficiency weigh in favor of waiting for a mandate from the Federal Circuit before awarding or denying attorneys’ fees. *See, e.g.*, Fed.R.Civ.P. 54(d) advisory committee’s note to 1993 amendments (“If an appeal on the merits of the case is taken, the court may rule on the claim for fees, may defer its ruling on the motion,

or may deny the motion without prejudice, directing...a new period for filing after the appeal has been resolved.”). The Court therefore DENIES WITHOUT PREJUDICE MDx’s Motion for Attorneys’ Fees and Costs and Request for Certification Pursuant to Federal Rule 54(b) (ECF No. 961). MDx shall have 14 days from the date of a Federal Circuit mandate to renew their motion, if not moot. In light of this ruling, MDx’s request for certification of any fee award or lack thereof is DENIED.

DATED this 22nd day of December, 2014.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Raymond P. Moore", written over a horizontal line.

RAYMOND P. MOORE
United States District Judge