IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

BRYON WEBB,

Plaintiff,

v.

WALMART INC., an Arkansas corporation d/b/a Wal-Mart Store #5899, **DANA FRANKLYN**, an individual, **LAURA RAYE**, an individual, **RANDY MONROE**, an individual, **VERONICA ISHMAEL**, aka "BONNIE," an individual, and **JOHN DOES 1–5**, inclusive,

Defendants.

Case No. 3:20-cv-01955-MO

OPINION & ORDER

MOSMAN, J.,

This matter comes before me on Plaintiff Bryon Webb's Motion for Judgment on Partial Findings [ECF 52]. For the reasons given below, I DENY the motion.

BACKGROUND

Plaintiff Bryon Webb, an African American male, Second Am. Compl. [ECF 48] ¶ 4, initiated this action against Walmart, alleging a variety of tort and discrimination claims. His partner, Andrew Colton, is an employee of Walmart. *Id.* ¶¶ 4–5. Webb alleges that, in November 2018, Walmart employees told Colton that Webb was told that he was not allowed to use the break room in the Walmart where Colton worked, despite partners of "[h]eterosexual co-workers with

light skin color and of different races" being allowed to do so. *Id.* ¶ 14–15. Webb alleges that, when he visited Colton a couple days later, two Walmart employees called him in as an intruder. *Id.* ¶ 17. Webb's claims stem from this incident.

At a hearing on a motion to dismiss in May of this year, I dismissed with prejudice Webb's public accommodation discrimination claim, his whistleblowing claim, and his aiding and abetting discrimination claim. Order [ECF 36]. Upon Webb's failure to timely file an amended complaint, I dismissed his intentional infliction of emotional distress claim as well. Order [ECF 49].

Now, Webb moves for partial judgment on these previously dismissed claims so he may appeal their grounds for dismissal. Mot. for Partial J. [ECF 52].

LEGAL STANDARD

District courts have wide discretion under Fed. R. Civ. P. 54(b) in determining whether an individual claim is ready for appeal in a multi-claim dispute. *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 8 (1980). The Rule 54(b) certification inquiry is a two-step process: first, the court must determine whether it has rendered a final judgment of an individual claim; second, it must assess if there is "any just reason for delay." *Wood v. GCC Bend, LLC*, 422 F.3d 873, 877–78 (9th Cir. 2005). In evaluating whether there is reason for delay, certification is proper if it is "'in the interest of sound judicial administration.'" *Id.* at 878 (quoting *Curtiss-Wright Corp.* 446 U.S. at 8). However, certification must be granted prudently to "'prevent piecemeal appeals in cases which should be reviewed only as single units.'" *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797–98 (9th Cir. 1991) (quoting *McIntyre v. United States*, 789 F.2d 1408, 1410 (9th Cir. 1986)).

DISCUSSION

Because Walmart does not dispute that my judgment on Webb's dismissed claims was final, *see generally* Resp. to Mot. for Partial J. [ECF 54], I turn to the second step of the Rule 54(b)

inquiry: whether there is reason for just delay. In his scant motion for partial judgment, Webb states that he "does not believe" such reason exists. Mot. for Partial J. [ECF 52] at 1. In response, Walmart argues partial judgment would lead to "duplicative and confusing litigation." Resp. to Mot. for Partial J. [ECF 54] at 4. I agree with Walmart.

Two of Webb's claims remain active: his discriminatory interference with contract claim under 42 U.S.C. § 1981 and his false arrest claim. Several elements of a § 1981 claim overlap with the elements of the public accommodation discrimination claim under ORS 659A.403 claim that Webb now seeks to appeal. To prove either claim, a plaintiff must make a prima facie case of discrimination. *See Mikes v. Albertsons Cos., LLC*, 3:17-cv-01400-JR, 2019 WL 2251821, at *2–3 (D. Or. Apr. 10, 2019) (finding both § 1981 claims and ORS 659A.403 claims require a showing of discriminatory intent). Appeal of one of Webb's discrimination claims separate from the other would require concurrent litigation of some of the core issues in this case: whether Webb was really denied services and whether that denial was because of his race. Such redundant litigation is an inefficient use of resources.

None of the arguments Webb raises in reply demonstrate otherwise. Webb claims that Rule 54(b) certification would not result in unnecessary appellate review and that future developments in the case are unlikely to moot an appellate decision. Reply in Supp. of Mot. for Partial J. [ECF 56] at 4–5. But they very well might—this case is still in its early stages, and a more thorough factual interrogation at summary judgment may cast Webb's claims in a different light. Nor are the issues on appeal "separate and distinct" from the remaining claims—they all arose from the same set of facts. Webb also argues that he will be "grievously harmed" if prevented from bringing an appeal because his attorneys are "uncertain[] about their ability to recover attorney fees" now that their claim for attorney's fees has been dismissed. Reply in Supp. of Mot. for Partial J. [ECF

56] at 6–7. Yet uncertainty is the litigator's lot in life; it in no way constitutes prejudice that would outweigh the waste of judicial resources inherent to simultaneous litigation of this case.

CONCLUSION

Because I find that there is just reason for delaying appeal, I DENY Webb's Motion for Partial Judgment [ECF 52].

IT IS SO ORDERED.

DATED this 18th day of November, 2021.

MICHAEL W. MOSMAN
United States District Judge