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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 RCB INTERNATIONAL, LTD.,

9 Plaintiffs,

10 v.

11 LABBEEMINT, INC.,

12 Defendants.
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NO. 1:16-cv-03109-SAB

**ORDER DENYING
LABBEEMINT'S MOTION TO
CERTIFY AND REQUEST FOR
STAY OF PROCEEDINGS**

14 Before the Court is Defendant Labbeemint, Inc.'s (Labbeemint) FRCP 54(b)
15 Motion to Certify Order Dismissing Labbeemint's Counterclaim for Declaratory
16 Relief as Final and Request for a Stay of Proceedings, ECF No. 117. Labbeemint
17 seeks an Order certifying as final the Court's dismissal of its declaratory judgment
18 claim in which it seeks a declaration that Plaintiff RCB International, Ltd.'s (RCB)
19 claims are preempted by the Plant Patent Act (PPA), 35 U.S.C. §§ 161-164.
20 Additionally, Labbeemint requests a stay of proceedings pending the appeal. For
21 the reasons set forth herein, Labbeemint's motion is denied.

22 **Legal Standard**

23 Fed. R. Civ. P. 54(b) provides that when an action presents one or more
24 claims for relief, "the court may direct entry of final judgment as to one or more,
25 but fewer than all, claims or parties only if the court expressly determines that
26 there is no just reason for delay." Under this rule, the district court must first
27 determine that it has rendered a final judgment, i.e., "an ultimate disposition of an
28 individual claim entered in the course of a multiple claims action." Wood v. GCC

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1 Bend, LLC, 422 F.3d 873, 878 (9th Cir. 2005) (quoting *Curtiss-Wright Corp. v.*
2 *Gen. Elec. Co.*, 446 U.S. 1, 7 (1980)) (internal quotation marks omitted). Then, the
3 court determines whether there is any just reason for delay. *Id.* In deciding whether
4 there are no just reasons for delay, the court considers (1) judicial administrative
5 interests; and (2) the equities involved. *Curtiss-Wright Corp.*, 446 U.S. at 8.
6 Typically, judgments pursuant to Fed. R. Civ. P. 54(b) “must be reserved for the
7 unusual case in which the costs and risks of multiplying the number of
8 proceedings and of overcrowding the appellate docket are outbalanced by pressing
9 needs of the litigants for an early and separate judgment as to some claims or
10 parties.” *Morrison-Knudsen Co., Inc. v. Archer*, 655 F.2d 962, 965 (9th Cir. 1981).

11 **Discussion**

12 Labbeemint asks the Court to certify as final for immediate appeal the
13 Court’s Order dismissing Labbeemint’s counterclaim for declaratory judgment
14 wherein it seeks a declaration that “RCB’s purported contractual restrictions
15 against any asexual propagation, use, distribution or sale of *Erospicata* mint plant
16 or plant materials without RCB’s express written consent are invalid and
17 unenforceable” and that “upon expiration of the applicable plant patent, the
18 *Erospicata* mint plant variety was released to the public and must be freely
19 available for public asexual propagation, use, distribution and sale.” See ECF No.
20 51. Labbeemint also requests a stay of proceedings pending appeal. Labbeemint
21 argues that immediate appeal, if successful, will eliminate each of RCB’s causes of
22 action.

23 The Court finds that its Order summarily dismissing Labbeemint’s
24 counterclaim for declaratory relief is a final judgment rendering it appealable
25 pursuant to Fed. R. Civ. P. 54(b). However, judicial administrative interests and
26 the balance of equities in this case weigh against certification for the following
27 reasons. First, although a ruling by the Ninth Circuit in favor in Labbeemint may
28 dispose of RCB’s claims, trial in this case is scheduled for December 4, 2017.

1 Allowing for immediate appeal will delay litigation significantly pending decision
2 by the Ninth Circuit. There is no legitimate reason for an early and separate
3 judgment that outweighs the risk of overcrowding the appellate docket;
4 Labbeemint may take its appeal, if any, after trial, less than five months from now.
5 Second, Labbeemint has identified no prejudice that it will suffer if its motion is
6 denied. Alternatively, RCB has sought injunctive relief to prevent the use and
7 propagation of the Erospicata plant. Requiring RCB to wait several more months
8 for a resolution may cause prejudice if Labbeemint wrongly enters the Erospicata
9 mint market or if competitors wrongly gain access to the Erospicata plant.
10 Consequently, the Court cannot say that there is no just reason for delay, and
11 Labbeemint's motion must be denied.

12 Because the Court denies Labbeemint's motion to certify its Order
13 dismissing Labbeemint's counterclaim for declaratory relief as final, Labbeemint's
14 request for stay of proceedings is also denied.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 1. Labbeemint's FRCP 54(b) Motion to Certify Order Dismissing
17 Labbeemint's Counterclaim for Declaratory Relief as Final and Request for a Stay
18 of Proceedings, ECF No. 117, is **DENIED**.

19 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
20 file this Order and provide copies to counsel.

21 **DATED** this 7th day of July, 2017.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned above a horizontal line.

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Stanley A. Bastian
United States District Judge