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The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

WASHINGTON STATE REPUBLICAN
PARTY, BERTABELLE HUBKA,
STEVE NEIGHBORS, MARCY
COLLINS, MICHAEL YOUNG, DIANE
TEBELIUS, MIKE GASTON,

Plaintiffs,

and,

WASHINGTON STATE
DEMOCRATIC CENTRAL
COMMITTEE, PAUL BERENDT,

Plaintiff-Intervenors,

and,

LIBERTARIAN PARTY OF
WASHINGTON STATE, RUTH
BENNETT, J.S. MILLS,

Plaintiff-Intervenors,

v.

NO. C05-0927-JCC

REPLY IN SUPPORT OF
MOTION FOR ENTRY
OF JUDGMENT

1 STATE OF WASHINGTON, ROB
 2 MCKENNA, SAM REED,
 3
 4 Defendant-Intervenors,
 5 and,
 6 WASHINGTON STATE GRANGE,
 7 Defendant-Intervenors.

8 **I. INTRODUCTION**

9 On August 20, 2009, this Court ordered the Plaintiffs and Plaintiff-Intervenors in this
 10 action (the state organizations of the Republican, Democratic, and Libertarian Parties) to
 11 repay to the State of Washington specified amounts of money previously paid to them by the
 12 State as attorneys' fees and costs. Docket No. 184. The Court found that the political parties
 13 were not entitled to these fees because they did not prevail in this litigation.

14 Plaintiff, Washington State Republican Party, opposes entry of judgment on that
 15 amount for two reasons. First, Plaintiff maintains that this award is not ripe for judgment
 16 under Fed. R. Civ. Pro. 54(b) because other unrelated issues remain pending before this
 17 Court. Plaintiff is wrong because this Court's order that Plaintiff repay money to the State is
 18 no way related to any remaining issues, and is suitable for certification as a final judgment
 19 under Rule 54(b) of the Federal Rules of Civil Procedure. Second, Plaintiff asserts that a
 20 pending lawsuit in state court precludes Plaintiff's compliance with a federal court order.
 21 The state court action has nothing to do with Plaintiff's obligation under this Court's order,
 22 and Plaintiff's stated reason for not entering judgment lacks merit.¹

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 26 ¹ Plaintiff-Intervenor Libertarian Party of Washington State did not respond to the State's motion.

II. ARGUMENT

A. THIS COURT'S MONETARY AWARD IN FAVOR OF THE STATE IS RIPE FOR RULE 54(B) CERTIFICATION AS A FINAL JUDGMENT.

Plaintiff contends, first, that the State's Motion for Entry of Judgment is premature. Plaintiff bases this claim on Rule 54(b) of the Federal Rules of Civil Procedure, which addresses the entry of judgment in a case involving multiple claims or parties. Rule 54(b), however, by its own terms, provides for the entry of final judgment as to fewer than all claims when the Court finds that there is no reason for delay. The rule provides:

When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—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. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

Fed. R. Civ. Pro. 54(b).

The United States Supreme Court has established a two-step process for determining whether Rule 54(b) certification of a final judgment is appropriate in a case involving multiple claims. *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7-8, 100 S. Ct. 1460, 64 L. Ed. 2d 1 (1980). As summarized by the Ninth Circuit, "A district court must first determine that it has rendered a 'final judgment,' that is, a judgment that is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'" *Wood v. GCC Bend, LLC*, 422 F.3d 873, 878 (9th Cir. 2005) (quoting *Curtiss-Wright*, 446 U.S. at 7). In the second step, "it must determine whether there is any just reason for delay." *Id.* (quoting *Curtiss-Wright*, 446 U.S. at 8).

The entry of final judgment as to this Court's monetary award in favor of the State is justified under Rule 54(b). The Ninth Circuit has explained that under the first step of this

1 analysis, the court must “evaluate ‘such factors as the interrelationship of the claims so as to
2 prevent piecemeal appeals.’” *AmerisourceBergen Corp. v. Dialysist West, Inc.*, 465 F.3d
3 946, 954, (9th Cir. 2006) (citing *Gregorian v. Izvestia*, 871 F.2d 1515, 1519 (9th Cir. 1989)).
4 While other claims remain in this case, they are not related in any way to the parties’
5 obligation to repay the money at issue. This Court’s August 20, Order fully resolved the
6 question of whether the political parties must reimburse the State (and its taxpayers) for
7 attorneys’ fees and costs previously paid, and liquidated the dollar amounts the parties owe.
8 Order at 26 (Aug. 20, 2009). It is “final” in that it fully resolves a discrete claim presented in
9 this case, even if other, unrelated, claims remain. *Curtiss-Wright*, 446 U.S. at 7.

10 The second step requires an assessment of “judicial administrative interests as well as
11 the equities involved” to determine whether a delay is warranted. *Id.* at 8. In this instance,
12 entry of a final judgment would not result in piecemeal appeals because the political parties’
13 obligation to reimburse money to the State is not related to any of the remaining claims and
14 does not implicate any of the facts upon which remaining claims would be resolved. It is
15 proper for this Court “to consider such factors as whether the claims under review [are]
16 separable from the others remaining to be adjudicated and whether the nature of the claims
17 already determined was such that no appellate court would have to decide the same issues
18 more than once even if there were subsequent appeals.” *Id.* The case upon which Plaintiff
19 primarily relies is distinguishable on this point because that case “would inevitably come
20 back to [the Ninth Circuit] on the same set of facts.” *Wood*, 422 F.3d at 879 (observing that
21 employment discrimination claim on which final judgment had been entered involved
22 “largely the same” facts as those claims still pending). The Ninth Circuit has, however,
23 approved of the entry of judgment when remaining claims depend upon different facts and
24 would not require the appellate court to review the same factual record multiple times. *Noel*
25 *v. Hall*, 568 F.3d 743, 747 (9th Cir. 2009); *see also Romoland Sch. Dist. v. Inland Empire*
26 *Energy Ctr., LLC*, 548 F.3d 738, 749 (9th Cir. 2008) (noting as a factor whether claims are

1 “closely intertwined”). The factual record for this particular issue would consist of the
2 record presented in support of the State’s Motion to Recover Attorneys’ Fees and for Costs,
3 and not the record (yet to be developed) upon which remaining claims will be contested.
4 There is, accordingly, no reason to delay entry of final judgment.

5 In support of its argument against entry of judgment, Plaintiff asserts that this Court
6 could potentially grant an award of attorneys’ fees in favor of the political parties and against
7 the State, if the political parties prevail upon a future claim. This merely raises an argument
8 of arithmetic, and not a reason to delay entry of judgment on a matter this Court has already
9 resolved. If such a future award were granted, the determination of which party owes money
10 to which other party is simply a matter of doing the math. As Plaintiff points out, given the
11 liquidated nature of the award already granted in favor of the State, interest has been accruing
12 since the entry of the Order. Resp. at 3.

13 This Court’s determination that the political parties must refund money to the State is
14 final in every sense, and is factually unrelated to any remaining claims. Certification
15 pursuant to Rule 54(b) and entry of judgment is therefore appropriate. Fed. R. Civ. Pro.
16 54(b).

17 **B. PENDING STATE COURT LITIGATION DOES NOT JUSTIFY A PARTY’S**
18 **FAILURE TO FOLLOW A FEDERAL COURT ORDER.**

19 Plaintiff next contends that judgment should not be entered in this case because of the
20 fact that a separate case is pending in state court regarding the appropriate uses of a particular
21 party account, referred to as the “exempt account,” under state campaign finance law. Resp.
22 at 4-5. But the pendency of a state court action has nothing to do with Plaintiff’s obligation
23 under an order of this Court. *Washington v. Washington State Commercial Passenger*
24 *Fishing Vessel Ass’n*, 443 U.S. 658, 695 (1979) (neither state law, nor action of a state court,
25 can interfere with a decision of a federal court). As a simple Supremacy Clause matter,
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1 neither state campaign finance law nor any potential state court order can justify Plaintiff's
2 failure to comply with this Court's Order to repay money to the State.

3 Furthermore, the state court case concerns only the uses the Republican Party may
4 lawfully make of money in its exempt fund, and the State has not contested the Plaintiff's
5 payment of legal fees from that account. Even if there were a legitimate issue as to whether
6 this fund could be used to repay the State pursuant to this Court's order, it would not
7 preclude the entry of a judgment against the party more generally.

8 Moreover, the expenditure reports that the Republican Party files with the state Public
9 Disclosure Commission reveal that the Plaintiff regularly pays attorneys' fees from its
10 exempt account. Supplemental Decl. of Counsel, Ex. 1-5 (expenditure reports filed for the
11 Washington State Republican Party's exempt account in 2009 showing five payments of
12 legal fees (second page of each report)). In fact, Plaintiff's reports show that just 11 days
13 after this Court entered its order requiring the Plaintiff to refund attorneys' fees to the State,
14 Plaintiff paid \$5,000 to its counsel from the very fund which they say might be unlawful to
15 use to pay attorneys' fees owed to the State. *Id.*, Ex. 5. Although the Plaintiff professes
16 doubt as to the legality of refunding to the State money that it received as an attorneys' fee
17 award from this account, the reimbursement of fees pursuant to this Court's order is
18 indistinguishable from the fees that Plaintiff routinely reports as expenditures.

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III. CONCLUSION

This Court should accordingly grant the State's Motion for Entry of Judgment.

DATED this 11th day of December, 2009.

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Attorney General

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