

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

RONNIE MAURICE STEWART, et al.,

Plaintiffs,

v.

ALEX M. AZAR II, et al.

Defendants.

Civil Action No. 1:18-cv-152 (JEB)

**JOINT MOTION FOR ENTRY OF FINAL JUDGMENT UNDER RULE 54(b)
OF THE FEDERAL RULES OF CIVIL PROCEDURE**

Plaintiffs Ronnie Maurice Stewart, et al., federal defendants Alex M. Azar, et al., and intervenor-defendant the Commonwealth of Kentucky (collectively, the “parties”), hereby move under Federal Rule of Civil Procedure 54(b) for entry of final judgment on Count VIII of the First Amended Class Action Complaint for Declaratory and Injunctive Relief, ECF No. 88. In support of this motion, the parties state as follows:

1. On March 27, 2019, the Court (1) granted plaintiffs’ motion for summary judgment, (2) denied defendants’ cross-motions for summary judgment, (3) vacated and remanded the Secretary of Health and Human Services’ approval of Kentucky HEALTH, and (4) ordered the parties to appear for a status hearing on April 10, 2019. Order, ECF No. 131.
2. The order was accompanied by a memorandum opinion, in which the Court adjudicated Count VIII of plaintiffs’ nine-count Complaint. Mem. Op. at 48, ECF No. 132 (granting plaintiffs’ summary-judgment motion “on Count VIII.”). The Court concluded that it “need not tackle Plaintiffs’ alternative bases for vacating some or all of the components of Kentucky HEALTH” or the Dear State Medicaid Directors letter that plaintiffs challenged because

“vacating the reapproval will give Plaintiffs all the relief they seek.” Mem. Op. at 47. The Court did not dismiss or otherwise grant judgment on the rest of plaintiffs’ claims.

3. Generally, “any order or decision, however designated, that adjudicates fewer than all the claims . . . does not end the action as to any of the claims.” Fed. R. Civ. P. 54(b). Rule 54(b), however, allows this Court to “direct the entry of a final judgment as to one or more, but fewer than all, claims . . . if the court expressly determines that there is no just reason for delay.” *Id.* To do so, the court must first determine that its ruling constituted a final judgment. “It must be a ‘judgment’ in the sense that it is a decision upon a cognizable claim for relief, and it must be ‘final’ in the sense that it is an ultimate disposition of an individual claim entered in the course of a multiple claims action.” *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 7 (1980) (internal citation and quotation marks omitted). Second, the court must determine whether there is any just reason for delay. “[I]n deciding whether there are no just reasons to delay the appeal of individual final judgments in setting[s] such as this, a district court must take into account judicial administrative interests as well as the equities involved.” *Id.* at 8. “The purpose of Rule 54(b) is to ‘mediate between the sometimes antagonistic goals of avoiding piecemeal appeals and giving parties timely justice.’” *Chaplaincy of Full Gospel Churches v. England*, 221 F.R.D. 255, 257–58 (D.D.C. 2004) (internal alterations omitted) (quoting *Taylor v. Fed. Deposit Ins. Corp.*, 132 F.3d 753, 760 (D.C. Cir. 1997)).
4. Here, this Court’s March 27, 2019 order is a final judgment because the order was an ultimate disposition (summary judgment) as to one of plaintiffs’ cognizable claims for relief (Count VIII of plaintiffs’ First Amended Complaint, which alleged that the Secretary’s approval of Kentucky HEALTH violated the Administrative Procedure Act (APA) because it “exceeded his Section 1115 waiver authority; otherwise violated the Medicaid Act; was arbitrary and capricious and an abuse of discretion; and ran counter to the evidence in the record.”). First

Am. Compl. ¶¶ 418–23, ECF No. 88; *Am. Forest Res. Council v. Ashe*, 301 F.R.D. 14, 18 (D.D.C. 2014) (recognizing that there is “no question” that the court’s order granting summary judgment was “intended to be final” as to certain claims because “[n]othing remains to be decided” on those claims).

5. There are also no just reasons to delay entering final judgment as to this claim. By entering final judgment, this Court would allow the defendants to seek appellate review of the Court’s decision without waiting for any further proceedings in this case.¹ Allowing this Court’s decision on Count VIII to proceed to any appellate review is the course of action most likely to preserve judicial and party resources, to timely obtain an ultimate adjudication of this claim, and to avoid potentially unnecessary adjudication of other statutory and constitutional questions.
6. Therefore, the circumstances justify the entry of a Rule 54(b) final judgment on Count VIII of plaintiffs’ First Amended Complaint.
7. The parties request that the Court: (a) enter final judgment on Count VIII of the plaintiffs’ First Amended Complaint; (b) stay consideration of the other counts of the First Amended Complaint pending any appeal by defendants of the Court’s ruling on Count VIII; (c) stay the timeframe for plaintiffs to request attorneys’ fees under Fed. R. Civ. P. Rule 54(d)(2) pending any appeal by defendants of the Court’s ruling on Count VIII; and (d) order the parties to update the court within 14 days of the appeal deadline if no appeal is filed or, if an appeal is filed, within 14 days of the mandate issuing from the appeal.
8. The parties request that the Court rule on the instant motion as soon as possible to allow the parties to pursue any appeal in a timely manner.

¹ While the court has remanded this matter, the Secretary does not intend to take further action regarding the Kentucky HEALTH application unless and until any appellate review has concluded.

Dated: April 3, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

MICHELLE BENNETT
Assistant Branch Director,
Federal Programs Branch

/s/ Vinita B. Andrapallyal
VINITA ANDRAPALLIYAL
MATTHEW SKURNIK
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883, Benjamin Franklin Station
Washington, D.C. 20044
(202) 305-0845 (telephone)
Vinita.b.andrapallyal@usdoj.gov

Counsel for the Federal Defendants

/s/ Jane Perkins
Jane Perkins
Catherine McKee
National Health Law Program
200 N. Greensboro Street, Suite D-13
Carrboro, NC 27510
919-968-6308 (x101) (telephone)
perkins@healthlaw.org
mckee@healthlaw.org

Counsel on behalf of Plaintiffs

/s/ Matthew F. Kuhn
M. Stephen Pitt
S. Chad Meredith
Matthew F. Kuhn
Office of the Governor
700 Capital Avenue, Suite 101
Frankfort, Kentucky 40601

Counsel for the Commonwealth of Kentucky

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
RONNIE STEWART, et al.,)	
)	
	Plaintiffs,)	
)	
	v.)	No. 1:18-cv-0152-JEB
)	
ALEX M. AZAR, et al.)	
)	
	Defendants.)	
<hr/>)	

[PROPOSED] ORDER GRANTING ENTRY OF FINAL JUDGMENT

Upon consideration of the parties’ joint motion for entry of final judgment, the Court:

- (1) enters final judgment on Count VIII of the plaintiffs’ First Amended Complaint;
- (2) stays consideration of the other counts of the First Amended Complaint pending any appeal by defendants of the Court’s ruling on Count VIII;
- (3) stays the timeframe for plaintiffs to request attorneys’ fees under Fed. R. Civ. P. Rule 54(d)(2) pending any appeal by defendants of the Court’s ruling on Count VIII; and
- (4) orders the parties to update the court within 14 days of the appeal deadline if no appeal is filed or, if an appeal is filed, within 14 days of the mandate issuing from the appeal.

IT IS SO ORDERED.

DATED this ____ day of ____, 2019

Hon. James E. Boasberg

United States District Judge